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National Law Firm

Head Office  
39 Stirling Highway  
Nedlands WA 6009

T: 1800 141 612

[legalconsolidated.com.au](http://legalconsolidated.com.au)

Your Reference: SMSF Trustee, Member & Deed Update  
Enquiries: Adj Professor, Dr Brett Davies  
Direct Telephone: 1800 141 612  
Email: [brett@legalconsolidated.com](mailto:brett@legalconsolidated.com)

Thursday, 25 March 2021

Kapetanovic Holding Pty  
10 Hawker Street  
Plympton Park SA 5038  
Australia

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[https://www.legalconsolidated.com.au/  
smf-trustee-and-member-update/](https://www.legalconsolidated.com.au/smf-trustee-and-member-update/) -  
telephone us, we can help you  
complete the questions.

*Adj Professor, Dr Brett Davies - Partner*

Dear Trustee,

## Deed of Variation for the Kapetanovic Future Fund

Thank you for instructing us to prepare the attached:

- (a) The Deed of Variation to update and replace previous deeds for the Fund this also updates the Trustees & Members.
- (b) 'Annexure A' of the Deed of Variation which sets out the Fund's replacement rules under Australian laws which updates the indefinitely continuing self-managed superannuation fund known as the Kapetanovic Future Fund as the SIS Legislation allows to provide Benefits to members, old age pensions and other purposes permitted under the Superannuation law.
- (c) Minutes of acceptance by the Trustee.
- (d) Product Disclosure Statement.

### How to print your document

When you are satisfied that the document is according to your instructions please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper  
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document  
(However, do not staple the covering letter to the document.)

We further confirm that:

- (a) The Deed of Variation empowers and authorises the Trustee to enter into and bind the Fund for borrowing arrangements compliant with establishing limited recourse borrowing arrangements under section 67A *Superannuation Industry*

(*Supervision*) Act 1993 (**SISA**). The Deed also contains clauses to allow ease of Super Fund borrowing including:

- (i) charging of assets
  - (ii) appointment of a custodian
  - (iii) creation, maintenance and dissolving bare trusts without triggering adverse Capital Gains Tax consequences
  - (iv) the ability to invest in any permissible assets including property
  - (v) compliance with major banks requirements for the applicable SIS and ATO requirements
  - (vi) authorising 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
- (b) For the implementation of the borrowing arrangement, we confirm that the Deed is drafted so as not to breach:
- (i) the exception to the prohibition on borrowing
  - (ii) sole purpose test
  - (iii) related party acquisition restrictions
  - (iv) in-house asset restrictions
  - (v) arm's length dealing requirements
  - (vi) prohibition on charging fund assets
  - (vii) prohibition on providing financial assistance to members
  - (viii) investment strategy requirements
  - (ix) Trustee covenants (section 52 of SISA)

### **Removing Trustee and Members – get their consent**

There is a good reason in wanting to share your SMSFs with others such as a spouse, children, in-laws and business partners. After all, they are expensive to operate and to have the cost divided by 4 people makes it cheaper.

However, the very close relationship of having all members as the trustees means that you all have to get on together. In *Triway Superannuation Fund v ATO* [2011] AATA 302 the drug affected child member stole all the Superannuation. The ATO successfully declared the fund non-complying for all the other members as well.

You cannot however just kick out the member/trustee unless they first give their written consent. Regulations 6.28 and 6.29 Superannuation Industry (Supervision) Regulations (Cth) states that a member's benefit cannot be rolled over to another fund without the member's written consent.

If you cannot get rid of the person you can apply to the court, but that is expensive and you need a good argument. (The member stealing money is a good argument.)

If the member has died, then their legal personal representative can sign this Deed.

### **Other Documents**

We cannot comment on any papers, correspondence or documents (such as subsequent variations to this Deed of Variation, if any, from time to time, or to the Deed or Deeds prior to the Deed of Variation).

We confirm that we have not been instructed to give advice as to whether the Deed that first established the Kapetanovic Future Fund or any variations, if any, since then allows for this Deed of Variation.

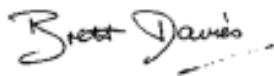
You must retain, indefinitely, all previous Deeds and Deeds of Variation; your bank will want to see originals of all the Deeds, Variations and this Variation.

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

### Conclusion

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

*This is a sample of the document you are building on our law firm's website.*

*Depending how you answer the questions the document and our letter may be different.*

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*Dr Brett Davies  
Partner  
Legal Consolidated Barristers & Solicitors*

## Membership Application to the Kapetanovic Future Fund

---

Member Applicant Full Name: Dragan Kapetanovic

Date of Birth: \_\_\_\_\_

Address of new Member: 246 Vincent Lane, Leederville WA 6007, Australia

Employer (if any): \_\_\_\_\_ Trustee's Tax File No. (TFN): \_\_\_\_\_

1. After reading, keeping a copy of and understanding the Kapetanovic Future Fund (Deed) and Product Disclosure Statement, I agree to be bound by the Deed and the Superannuation law as defined in the Deed
2. I consent to my tax file number being made available to the Trustee, government authorities and professional advisers. I **enclose** a signed Tax File Number Declaration (available from the ATO in hard copy only ordering at <https://www.ato.gov.au/Forms/TFN-declaration/>).
3. I am aware of the other members of the fund and their relationships to me including, any employee and employer relationship and family relationship and acknowledge that I am not a disqualified person under the SIS Regulations.
4. I have read, understood and signed the attached ATO's Trustee Declaration (Download Trustee Declaration from [https://www.ato.gov.au/uploadedFiles/Content/SPR/Forms/Trustee%20declaration\\_SPR\\_n71089\\_19272.pdf](https://www.ato.gov.au/uploadedFiles/Content/SPR/Forms/Trustee%20declaration_SPR_n71089_19272.pdf))
5. Below I have ticked (and **enclose** the completed document) on how I choose to deal with any Superannuation (death benefit) that I may have left when I die:
  - a. **death benefit agreement** which binds the Trustee and does not expire
  - b. **binding death benefit notices** (binding nomination forms) which bind the trustee but which expire after 3 years unless renewed
  - c. **non-binding nomination forms** which do not bind the Trustee and don't expire

Signed by the applicant Dragan Kapetanovic

..... Date: .....

*(Copy as required for any new members from time to time)*

## **Membership Application to the Kapetanovic Future Fund**

Member Applicant Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address of new: \_\_\_\_\_

Member: \_\_\_\_\_

Employer (if any): \_\_\_\_\_ Trustee's Tax File No. (TFN): \_\_\_\_\_

1. After reading, keeping a copy of and understanding the Kapetanovic Future Fund (Deed) and Product Disclosure Statement, I agree to be bound by the Deed and the Superannuation law as defined in the Deed
2. I consent to my tax file number being made available to the Trustee, government authorities and professional advisers. I **enclose** a signed Tax File Number Declaration (available from the ATO in hard copy only ordering at <https://www.ato.gov.au/Forms/TFN-declaration/>).
3. I am aware of the other members of the fund and their relationships to me including, any employee and employer relationship and family relationship and acknowledge that I am not a disqualified person under the SIS Regulations.
4. I have read, understood and signed the attached ATO's Trustee Declaration (Download Trustee Declaration from [https://www.ato.gov.au/uploadedFiles/Content/SPR/Forms/Trustee%20declaration\\_SPR\\_n71089\\_19272.pdf](https://www.ato.gov.au/uploadedFiles/Content/SPR/Forms/Trustee%20declaration_SPR_n71089_19272.pdf))
5. Below I have ticked (and **enclose** the completed document) on how I choose to deal with any Superannuation (death benefit) that I may have left when I die:
  - a. **death benefit agreement** which binds the Trustee and does not expire
  - b. **binding death benefit notices** (binding nomination forms) which bind the trustee but which expire after 3 years unless renewed
  - c. **non-binding nomination forms** which do not bind the Trustee and don't expire

Signed by the applicant

..... Date: .....

## **Minutes accepting New Trustee and Resignation of Outgoing Trustee of the Kapetanovic Future Fund**

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Held at ..... on ..... day of .....20 ..... (Date of Meeting)

**Present:**

**Outgoing Trustee:** .....

**Incoming Trustee:** .....  
and during those time where the Trustee is a company then as directors of the Trustee.

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

**Notice of Meeting:** It was noted that all persons have received notice of this meeting and that all persons consent to the meeting being held and waive the 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 the *Corporations Act*.

It was resolved that and, unless any other date is mentioned, effective on the Date of Meeting:

1. The Incoming Trustee acknowledges capacity at law to act as Trustee and consents to acts as trustee of the Kapetanovic Future Fund and be bound for the Kapetanovic Future Fund Deed.
2. The Incoming Trustee is not a disqualified person under the SIS Regulations.
3. Each Incoming Trustee and directors of a corporate trustee have read, understood and signed the ATO's Trustee Declaration (Downloaded at [https://www.ato.gov.au/uploadedFiles/Content/SPR/Forms/Trustee%20declaration\\_SPR\\_n71089\\_19272.pdf](https://www.ato.gov.au/uploadedFiles/Content/SPR/Forms/Trustee%20declaration_SPR_n71089_19272.pdf))
4. The Outgoing Trustee ceases to act as Trustee and the cessation is accepted by the Incoming Trustee.

There being no further business the meeting was declared closed.

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

.....  
Outgoing Trustee or a representative of the Outgoing Trustee

.....  
Incoming Trustee or a representative of the Outgoing Trustee

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2. Receive legal advice
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4. We take responsibility for the legal document

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*Adj Professor, Dr Brett Davies - Partner*



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## Full Replacement, Trustee and Members Update Deed of Variation for the Kapetanovic Future Fund

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This Deed of Variation is made by:

**Outgoing Trustee:**

Dragan Kapetanovic  
of 246 Vincent Lane, Leederville WA 6007, Australia

Bojana Kapetanovic  
of 246 Vincent Lane, Leederville WA 6007, Australia

**New Trustee:**

Kapetanovic Holding Pty Ltd ACN 195 198 723  
10 Hawker Street, Plympton Park SA 5038, Australia

*You are building the update  
SMSF Deed. It updates your  
Self-Managed*

*Superannuation Fund for:*

- 1. Trustees*
- 2. Members*
- 3. Deed (full  
replacement)*

## 1. Trust Variation

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- 1.1 The Kapetanovic Future Fund was established by a deed dated 18 August 2010 as that deed is amended from time to time (**Deed**).
- 1.2 The Trustee has satisfied itself, or sought professional advice, that the Deed allows for variations, such as the variations contained in this Deed of Variation.
- 1.3 The Kapetanovic Future Fund contains assets and has not vested.
- 1.4 The Trustee varies the Deed effective from, unless the Trustee decides otherwise, by way of minute or any other way, when the Deed of Variation is signed (**Start Date**).
- 1.5 "Annexure A" forms part of this Deed of Variation

## 2. Trustee

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**Outgoing Trustee:**

The following resign or are removed from the position of Trustee and all other similar controlling positions:

Dragan Kapetanovic  
of 246 Vincent Lane, Leederville WA 6007, Australia

Bojana Kapetanovic  
of 246 Vincent Lane, Leederville WA 6007, Australia

(Outgoing Trustee)

Where an Outgoing Trustee is unable to sign because of death or incapacity then their legal representative, legal personal representative or another Trustee signs on their behalf or under authority of the Deed.



#### **New Trustee:**

The following be appointed to the position of Trustee.

Kapetanovic Holding Pty Ltd ACN 195 198 723  
10 Hawker Street, Plympton Park SA 5038, Australia

(New Trustee)

The New Trustees accept the appointment.

### **3. Members**

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#### **Outgoing Member:**

The following cease to be a Member of the: Kapetanovic Future Fund

Bojana Kapetanovic  
246 Vincent Lane, Leederville WA 6007, Australia

(Outgoing Member)

Where an Outgoing Member is unable to sign because of death or incapacity then their legal representative, legal personal representative or another Member signs on their behalf or under authority of the Deed.

#### **Remaining Member:**

The following confirm that they will continue to hold the position of Member of the Kapetanovic Future Fund

Dragan Kapetanovic  
246 Vincent Lane, Leederville WA 6007, Australia

(Remaining Member)

### **4. Severing to reduce tax and stamp duty**

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- 4.1 The Deed and this Deed of Variation is interpreted to reduce taxes, imposts, duties and stamp duty (including State and federal) (Taxes) and 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 Deed or Deed of Variation to the extent of the illegality or in the furtherance of the reduction of the Taxes.
- 4.2 The Deed and this Deed of Variation is read down so that no mandatory taxation law or Taxes, from time to time, is contravened that would lead to an unfavourable taxation position.
- 4.3 For land ownership registration requirements, including where there is a change of Trustee then all powers in the 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.

## 5. No Resettlement

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5.1 This Deed of Variation is supplemental to the Deed. This Deed of Variation amends the Deed in all Australian jurisdictions.

5.2 If any of the terms of the Deed are inconsistent with the terms of the Deed of Variation, then the terms of this Deed of Variation prevails. However, the Deed of Variation in no way constitutes a resettlement of the Kapetanovic Future Fund part of it. If anything in the Deed of Variation establishes a resettlement of the Kapetanovic Future Fund then the applicable words are read down so that they do not constitute a resettlement.

5.3 The Deed of Variation is interpreted to avoid any illegality. If any part of the Deed is nonetheless illegal, it is severed from the Deed of Variation to the extent of its illegality.

5.3.1 The Deed of Variation is read down so that no mandatory provision of law, taxation law, duty or impost (both State and federal) or any other Authority direction from time to time, is contravened that would lead to an unfavourable taxation position.

5.4 Every part of this Deed of Variation, every clause and term is subservient to the above clauses.

Legal Consolidated  
Barristers & Solicitors  
automatically puts in all  
Deed updates. These are  
required for the:

1. new  
Superannuation  
legislation; and
2. the budget changes.

## 6. Protecting grandfathered structures & defined benefits

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### 6.1 In house asset rules

If any clause in this Deed of Variation adversely affects the grandfathering provisions for any structures or transactions that the Kapetanovic Future Fund has in place for the in-house asset rules including for sections 71A to 71E *Superannuation Industry (Supervision) Act 1993* then the offending words are read down so as not to adversely affect any such transactions or structures that are in place.

### 6.2 Defined Benefit Pensions

The Deed of Variation is read down so as to preserve any payments of defined benefit pensions and any other pensions and payments. Any power to pay a defined benefit pension (under the Deed) is preserved.

### 6.3 Accrued Benefits preserved

This Deed of Variation is not intended to prejudicially affect or reduce any entitlement or Benefit that has accrued. This Deed of Variation is read down, as required, to give effect to this clause.

## 7. Replacement of the Deed

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7.1 To continue to comply with the laws pertaining to superannuation, subject to the above, this Deed of Variation varies the Deed from the Start Date by replacing the terms of the Deed with the terms contained in the attached Self-Managed Superannuation Fund document marked as "Annexure A".

## **8. Decision making in more than one place and Notices**

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

## **9. Signing the Deed of Variation in different locations**

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- 9.1 The Deed of Variation may be executed by signing identical documents (counterpart).

## **10. Interpreting the Deed**

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- 10.1 In the Deed of Variation unless the context indicates a contrary intention:
  - 10.1.1 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; superannuation fund, person in the capacity as a trustee, custodian or personal representative of a deceased estate
  - 10.1.2 the plural includes the singular and vice versa and a reference to any gender includes every other gender or no gender
  - 10.1.3 a reference to the Deed or Deed of Variation includes a reference to any amendment, novation, variation, supplemental deed or replacement from time to time
  - 10.1.4 references to any party to this Deed of Variation include its successors or permitted assigns
  - 10.1.5 references to laws in the Deed of Variation refer to those laws as amended as consistent with the overall purpose of the Deed of Variation and does not lead to an anomaly
  - 10.1.6 reference to any statute, subordinate legislation or instrument includes all statutes, subordinate legislation and 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
  - 10.1.7 if any part of the Deed of Variation is or becomes invalid, then that does not affect the validity of the remainder of the Deed of Variation

Executed as a Deed on ..... 20 .....

SIGNED, SEALED AND DELIVERED by  
**Dragan Kapetanovic**

\_\_\_\_\_  
**Dragan Kapetanovic**

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

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

SIGNED, SEALED AND DELIVERED by  
**Bojana Kapetanovic**

\_\_\_\_\_  
**Bojana Kapetanovic**

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

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

EXECUTED for and on behalf of  
**Kapetanovic Holding Pty Ltd**  
ACN 195 198 723

Member, by authority of its Directors in  
accordance with section 127  
*Corporations Act 2001 (Cth)*

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

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



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“Annexure A”

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**Self-Managed Superannuation Fund  
Deed for the  
Kapetanovic Future Fund**

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This Deed is for the Kapetanovic Future Fund which is a self-managed superannuation fund, entered into, via the accompanying Deed of Variation, by:

(collectively Trustee)

## 1. Trust

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- 1.1 The Trustee confirms this indefinitely continuing self-managed superannuation fund known as the Kapetanovic Future Fund as the SIS Legislation allows. This provides Benefits to members, old age pensions and other purposes permitted under the Superannuation law.
- 1.2 The Trustee (acting jointly and unanimously at all times and when a company all the directors acting jointly and unanimously) agrees to continue to manage the Fund and acknowledges that the Fund is vested in the Trustee under the terms of this Deed.
- 1.3 The Deed is interpreted so that it has the maximum flexibility of becoming another type of fund under the Superannuation law.

## 2. Dictionary

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2.1 Unless a contrary intention appears:

**Asset-test Exempt Pension** includes a benefit exempt from the law including under the *Social Security Act 1991* and the *Veterans*

**Beneficiary** a person immediately and absolutely entitled to a Benefit as a member and it only includes a member where that member is absolutely entitled to a Benefit for another member

**Benefit** an amount payable out of the Fund to or for a member

**Contributions** gross contributions made to the Fund before tax and other contributions, after tax, as the context requires

**Dependant** for a current or former member or Beneficiary, as the context includes:

2.1.1 spouse

2.1.2 of any age, child (including a child born any time after marriage, nuptial, legally adopted, legally adopted out, genetic related by DNA offspring, cloned, from (or partly from) a donor (frozen or otherwise) child

2.1.3 interdependency relationships

2.1.4 any other person who, in the Trustee's opinion, was maintained, educated or dependent including as defined in the SIS Legislation (including regulation 6.21(2A) SIS Regulation

2.1.5 Nominated dependant

2.1.6 any person who can be paid a concessional tax superannuation benefit on their death

**Deed** this document for the Fund known as the Kapetanovic Future Fund as amended from time to time

*Build this Update SMSF Deed.*

*You get:*

1. *Deed of Variation – updates your SMSF Deed, the Trustees and the Members*
2. *Binding Death Benefit Agreement*
3. *Minutes for the Trustee to accept the Deed of Variation*
4. *Product Disclosure Statement – fully updated*
5. *Letter on our law firm's letterhead confirming the above. Signed by a partner of the law firm*

**Expenses** whether payable, likely to become payable, current, future, contingent or actual all liabilities, costs and expenses in maintaining the Fund including, reimbursements, tax (including on contributions, shortfall components, surcharge and income, on unrealised gains, advanced tax instalments and notional surcharge amounts), tax credits, levies, charges, fees adjustment credits, roll-over payments, payment from a pension account, insurance and annuity policies, forfeited amounts, negative earnings, contributions splits, valuation deficiency, disposal losses and an equalisation account

**Fund** the superannuation fund known as the Kapetanovic Future Fund

**Member** a person admitted as a member under the terms of the Deed, duly recorded as a member and has not ceased to be a member

**Nominated dependant** a person nominated (except in a death benefit notice) by a member as their 'nominated dependant'

**Responsible Authority** as the case requires, the relevant body responsible for superannuation including the Australian Taxation Office, the Australian Prudential Regulation Authority and the Australian Securities & Investments Commission

**Roll-over** includes a transitional employment termination payment made or received by the Trustee and a payment rolled-out of or in to a superannuation fund

**Securities** includes fully paid and partly paid shares, fully paid and partly paid stocks, debentures, notes, bonds, mortgages, options and other similar securities. Neither security nor registration is required

**SIS Act** the *Superannuation Industry (Supervision) Act 1993*

**SIS Legislation** all superannuation acts, including, together with their regulations and administrative guidelines, including, by way of example:

- (a) SIS Act and SIS Regulations
- (b) Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011
- (c) Superannuation (Financial Assistance funding) Levy Act 1993, Superannuation (Resolution of Complaints) Act 1993, Superannuation (Rolled-Over Benefits) Levy Act 1993
- (d) Superannuation Industry (Supervision) Consequential Amendments Act 1993, Superannuation Supervisory Levy Amendment Act 1993
- (e) Occupational Superannuation Standards Amendment Act 1993
- (f) Superannuation Act 2005, Superannuation Act 1990, Superannuation Act 1976
- (g) Superannuation (Productivity Benefit) Act 1998
- (h) Superannuation Benefits (Supervisory Mechanisms) Act 1990
- (i) Superannuation (Family Law - Superannuation Act 1922) Orders 2004 and Superannuation (Family Law - Superannuation Act 1976) Orders 2004
- (j) Superannuation Guarantee (Administration) Act 1992

**SIS Regulations** *Superannuation Industry (Supervision) Regulations 1994*

**Spouse** includes spouse, widow, widower and defacto spouse, widow or widower of any sex including a non-member spouse also including within the meaning of that term under



Part VIIIIB *Family Law Act* or as defined under the SIS Legislation and a person involved with on a genuine domestic basis

**Superannuation law** includes:

- (k) SIS Legislation
- (l) any common law or law including the Corporations Act 2001, the Superannuation Security Act 1991, relating to superannuation or the taxation of superannuation
- (m) any lawful requirement to the Fund by a Responsible Authority
- (n) any other body that has responsibility for the regulation of superannuation, including an Asset-test Exempt Pension
- (o) changes to any superannuation law after the date of this Deed
- (p) any proposed law or lawful requirement that the Trustee believes will have retrospective effect

The Superannuation laws have changed. An old SMSF Deed is dangerous. It contains irrelevant clauses. This increases your risk of exercising a power you're no longer allowed. This results in the loss of the tax concessions.

**Tax Act** *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* and any other law that is appropriate

2.2 Unless the Trustee, from time to time, states otherwise, and subject to the Trustee's intention, these terms have the same meaning, as per the SIS Legislation, as the case requires:

actuary, annuity, approved auditor, approved deposit fund, binding death benefit notice, cash, civil penalty order, eligible roll-over fund, gainful employment, growth pensions, interdependency relationship, mandated employer contributions, non-binding nomination form, pension age, pension dependant, preservation age, regulated superannuation fund, self-managed superannuation fund, shortfall component, superannuation fund, transition to retirement pension, unrestricted non-preserved benefit

and also under the Tax Act

approved deposit fund, excess contributions, member release authority, transitional employment termination payment

### 3. Deed subservient & augmented by legislation

3.1 At all times, this Deed is interpreted so that:

- 3.1.1 it complies with the Superannuation law
- 3.1.2 is construed as a qualifying self-managed superannuation fund
- 3.1.3 qualifies for concessional tax treatment including under the Tax Act
- 3.1.4 members and Beneficiaries retain entitlement to tax deductions
- 3.1.5 an income stream qualifies as an Asset-test Exempt Pension
- 3.1.6 nothing gives rise to a fringe benefit which is taxable to an employer (unless the employer expressly chooses to incur a fringe benefit tax)
- 3.1.7 a penalty is not imposed on the Trustee or directors of a Trustee

(collectively **Requirements**)

3.2 To achieve the Requirements, from time to time:

- 3.2.1 this Deed is read down and parts severed, as necessary

- 3.2.2 this Deed is deemed to contain any provision that is required by the Superannuation law
  - 3.2.3 this Deed is deemed not to contain any provision that is required to be excluded by Superannuation law
  - 3.2.4 Trustee and member rights, privileges, benefits, powers, authority, permissions and the allowance of omissions, permitted under the Superannuation law, are read into this Deed
  - 3.2.5 Trustee and member mandatory requirements, actions, restrictions and omissions, in the Superannuation law are read into this Deed
  - 3.2.6 any covenant or other requirement made necessary by the Superannuation law to be included in this Deed is deemed to be included
  - 3.2.7 if the Superannuation law no longer requires any such covenant or requirement to be so included then the covenant or requirement ceases to be included
  - 3.2.8 if any such covenant or requirement or its operation is pursuant to the provisions of the Superannuation law modified then the Trustee is only required to comply with the covenant or requirement as it may be so modified
  - 3.2.9 where there is a non-mandatory change to the Superannuation law, which in the Trustee's view is beneficial to members, then the Deed is taken to be so amended so as to take advantage of these non-mandatory changes
- 3.3 The Superannuation law prevail over the terms of this Deed to the extent of any inconsistency.
- 3.4 The Deed is interpreted to avoid any illegality. If any clause is nonetheless illegal, it is severed from the Deed to the extent of the illegality.
- 3.5 The Deed is read down so that no mandatory taxation law, duty or impost (both State and federal) or Responsible Authority direction from time to time, is contravened that would lead to an unfavourable taxation position.
- 3.6 Irrespective of the Deed, the Trustee complies with (and is authorised to so act on) any mandatory directions of any Responsible Authority.
- 3.7 Every part of this Deed, every clause and term is subservient to the above clauses.

## **4. Date Fund starts**

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- 4.1 Unless the law otherwise requires, the Fund starts on the date that the Trustee states that the Fund started.

## **5. Trustee Powers**

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- 5.1 The Trustee (acting unanimously when more than one and, when a company, the directors acting unanimously) has all the powers of a natural person, company and as available under the Superannuation law. This is as though the Trustee had both legal and beneficial ownership of the Fund. In addition, the Trustee has the power to do all things necessary to manage the Fund in an efficient and economically manner. Such power includes, as the Trustee sees fit (not subject to direction of any other person in exercising any power), liberty and absolute discretion to exercise the power or not exercise the power. Such power also includes ratifying, recalling, revoking, repairing, correcting, changing and rectifying a previous action, non-action or

decision. All Trustee decisions are final and binding. The Trustee's interpretation of the Deed is final. To exclude any possible doubt, the Trustee has the power to do also any of the following:

## Membership

- 5.2 accepting or rejecting any person (including minors) as a member on any terms and subject to any requirements, information and completion of an application form set by the Trustee
- 5.3 deciding the date when a person becomes or ceases as a member (including backdating (if no date is decided then when the application for membership was accepted by the Trustee))
- 5.4 adding, removing, redefining, excluding and changing members and non-members

## Member Accounts

- 5.5 dealing with a member's entitlements and obligations in any way including setting up, crediting and debiting of accumulation, pension, reserve, income, forfeiture, equalisation and other accounts and trusts (including holding trusts) for any purpose including other accounts and trusts and any Superannuation law and publications
- 5.6 establish a sub-account of any account (including the income account)

*Over the last 4 years, there have been 13 significant changes to superannuation legislation. These include:*

- change concessional contribution cap
- Insurance – new satisfying conditions

## Equalisation Account

- 5.7 setting up, crediting and debiting such equalisation, reserve and other accounts for any purpose, including:
  - 5.7.1 reserving strategies, including to smooth earnings and increasing the earning rate
  - 5.7.2 expenses
  - 5.7.3 services and professional services including advisory, financial planning, accounting and legal fees
  - 5.7.4 insurance premiums including life, trauma and disability payments
- 5.8 allocating, at any time, any equalisation amounts to other accounts

## Dealings

- 5.9 dealing with, crediting, allotting to and debiting from a member's account (or rejecting) and making provision for, in any amount, in any time frame, from time to time, in proportion as the Trustee thinks fit, including:
  - 5.9.1 any amount standing to the Fund's credit on or after the date when this Deed starts and contributions (including cash, in specie, chose in action, other assets, classes of assets, investments, other Fund property held by the Trustee, nominee or custodian) made, including when they have a negative value, including contributions by:
    - (a) a member
    - (b) a member's employer (without affecting the employment contract or termination of employment) including an employer subject to the

- requirements of the Superannuation Guarantee (Administration) Act 1992 (and for payments other than cash the Trustee may require the employer to pay any fringe benefit tax)
- (c) spouse
  - (d) another member
  - (e) another fund
  - (f) government body
  - (g) other persons including by gift or by will
- 5.9.2 earnings (including positive and negative) transferred from any account
- 5.9.3 to underwrite and sub-underwrite risks, contingencies and liabilities, including under a superannuation arrangement conducted by an employer, or any person, under an agreement for the transfer of employees to the Fund
- 5.9.4 a forfeited amount allocated to the member
- 5.9.5 an amount transferred from any account including a pension account and reversionary pension account
- 5.9.6 commutation of a pension
- 5.9.7 insurance (group and individual) policy and annuity policy and proceeds
- 5.9.8 contribution split requests including, either a transfer or roll-over to a different fund or establishing an entitlement to the benefits for the spouse or partner within the Fund and also including splits where the spouse or partner is not a member
- 5.9.9 allotting contributions or transfers to a member's spouse
- 5.9.10 income, profits, adjustment credits, valuation surplus, financial assistance (including Part 23 SIS Act)
- 5.9.11 allocating the Fund's positive or negative interim earning rate as adjusted (and the Trustee may take into consideration any provision or reserve for future contingencies)
- 5.9.12 interest, dividends, distributions, profits and other benefits of any kind arising from investments and accumulation of income
- 5.9.13 money, investments and other property received in payment
- 5.9.14 shortfall components and financial assistance
- 5.9.15 dealing with or paying expenses including reasonable adjustments from the Fund from any account to

*Build Self Managed Super Fund  
Trustee, Member and Deed Update*

[https://www.legalconsolidated.com.au/  
smsf-trustee-and-member-update/](https://www.legalconsolidated.com.au/smsf-trustee-and-member-update/)

### **Transfers from another fund**

- 5.10 taking over or acquiring by transfer any part of the assets of another fund (the Trustee may decide that the person is treated as having been a member of the Fund from the time they became a member of the other fund) irrespective of whether the person has become a member of the Fund and dealing with the assets in any way

### **Transfer to another fund**

- 5.11 transferring or rolling-over (including Part 24 SIS Act) to any fund or trust (including a successor fund to the Fund) any part of the Fund (cash or other investments) even where the member is not a member of that fund

- 5.12 a receipt from the secretary or any person of that fund discharges the Trustee from all liability and is a sufficient discharge

### **Payments, pensions and automatic updating**

- 5.13 paying any Benefit, in kind, in cash or any form of property, in any means, including, as a lump sum, death benefit, pension (income based, transition to retirement, non-commutable, complying or non-commutable income stream, non-commutable pension, revenue based, complying, market-linked income stream and growth) to a member or annuities for a member or, if applicable, a member's Dependent
- 5.13.1 making payments in stages, such as, an initial payment followed by subsequent payments or instalments
- 5.13.2 being wholly determined by reference to policies of the Fund
- 5.13.3 financial assistance under part 23 SIS Act
- 5.13.4 passing on to the recipient of that payment any benefit payable to the Fund if a deduction were allowed including under section 100 of the Income Tax Assessment Act 1997
- 5.13.5 paying interest on the Benefit at any age, whether or not the member is alive and including, but not limited to:
- 5.13.6 after the member's retirement
- 5.13.7 death
- 5.14 paying a death benefit or any Benefit under a death benefit agreement, binding death benefit notice (including under regulation 6.17A SIS Regulations), a non-binding death benefit notice (including under Part 2 of Schedule 2 SIS Regulations) and non-binding nomination forms to any person, including a dependant, legal personal representative or any other person and where the requirement is binding on the Trustee then the Trustee must so comply
- 5.15 allowing a member to use any lump sum benefit for a pension including all pensions referred to in this Deed
- 5.16 allowing a member to seek a withdrawal from the Fund or, conversely, retention and deferral of the payment of the Benefit
- 5.17 allowing a member roll-back or initiate an internal roll-over into the Fund
- 5.18 allowing a member to stop a pension or income stream and start a new pension or income stream for any purpose, including cash flow and estate planning
- 5.19 adjusting the Benefit where new or more correct information comes to hand
- 5.20 stop an income stream, commute and then restart the income stream or Benefit, allow for a commutation of a Benefit, income stream, any commutations of any nature, roll overs and transfers of income stream and lump sum between accounts
- 5.21 augmentation of all powers to allow for the Fund to deal with any new or amended rules or laws as required, mandatory or that may benefit the Fund under the Superannuation law, any other laws and any Australian Taxation Office publication, ruling or direction
- 5.22 allow for the commencement, subrogation, renunciation, roll over, transfer, acceleration, proportionation of any income including an income stream in the form of an account-based pension, reversionary pension including a transition to retirement income stream

- *pension limits and changed payout rules*
- *Excess concessional contributions rules*
- *Investment strategy should now be reviewed annually*
- *Trustees must report assets at market value using new rules*
- *remuneration for certain non-trustee duties*

- 5.23 being bound to follow a binding death benefit agreement and reversionary pension
- 5.24 allowing a member to use any lump sum benefit for a pension including all pensions referred to in this Deed
- 5.25 allowing a member to seek a withdrawal from the Fund or, conversely, retention and deferral of the payment of the Benefit
- 5.26 allowing a member roll-back or initiate an internal roll-over into the Fund
- 5.27 allowing a member to stop a pension and start a new pension for any purpose, including cash flow and estate planning
- 5.28 adjusting the Benefit where new or more correct information comes to hand
- 5.29 power to convert a pension, of any nature (including an exempt current pension income), into a lump sum, whether by an election, minute or otherwise. This is for income tax purposes or any other purpose. This is irrespective of whether the Fund's exempt current pension decreases, including under Regulation 995-1.03. This is whether or not it is in compliance with section 295-390 *Income Tax Assessment Act 1997* or not. This is irrespective of whether the proportionate or any other method or methods are used or applied
- 5.30 to allow elections of any nature
- 5.31 being bound to follow any binding death benefit agreement or nomination

### **Payment to legally disabled**

- 5.32 if the Trustee forms the opinion that a member or other person to whom a Benefit may otherwise be payable is:
  - 5.32.1 under a legal disability (including bankruptcy, threat of bankruptcy, being a minor, mental illness, drug addiction etc...); or
  - 5.32.2 is unable for any reason to satisfactorily deal with the Benefit then the Trustees may retain or apply the Benefit, in any way, to any person, including:
    - 5.32.3 to any Dependant of the member or other person
    - 5.32.4 for or towards that member's maintenance, education, advancement, accommodation, general wellbeing or otherwise in any form, on any conditions
    - 5.32.5 to any of the member's family, including spouse, parents, brother, sister, grandparents, lineal descent, any person who appears to be a trustee or guardian of the member, any person who appears to have the care or custody of the member or any person who appears to be paying the member's financial expenses

### **Payment to a Bankrupt**

- 5.33 irrespective of the above clause, while a member or Beneficiary is or, in the Trustee's view, at risk of entering into bankruptcy then, without reference to that member or Beneficiary, the Trustee must for that member:
  - 5.33.1 not increase that pension
  - 5.33.2 reduce any pension payments to the minimum amount
  - 5.33.3 not commute any pension
  - 5.33.4 not distribute any of the Fund that may come under the control of the trustee in bankruptcy

## Family Law matters

- 5.34 complying with a payment splitting agreement (including deferred payment split), payment flagging agreement and court orders including a court order under Part VIIIIB *Family Law Act*

## Authorised investments & activities

- 5.35 investing any Fund assets anywhere in Australia, in anything, and outer space, whether linked to the Fund or not, irrespective of whether a Trustee or a member has a direct or indirect interest and may directly or indirectly, whether or not authorised by the law, in any form or otherwise deal with the Fund in anyway including:
- 5.35.1 life, life endowment, term, trauma or other policy, trust funds, deposits and loans (with or without security), real property (whether income earning or otherwise and whether or not), shares (unlisted or listed on any stock market), securities, debentures and other securities, options (including put and call), contracts, derivatives, futures contracts, hedging, currency warrants and other financial instruments
  - 5.35.2 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
  - 5.35.3 both permissible and non-permissible investments under any law of any Australian or overseas jurisdiction
  - 5.35.4 real, personal, chattels and choses in actions (including company securities and Securities) and improvements thereto
  - 5.35.5 open and operate bank accounts (including friendly society, building society, or other body) to draw, make, accept, endorse, discount, execute, issue or otherwise deal with all forms of negotiable or transferable instruments and to enter into any bill facilities or other form of banking facilities
  - 5.35.6 deposit securities, Securities, 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
  - 5.35.7 exercise all rights and perform all duties of holding shares, stock or debentures in any company
  - 5.35.8 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 other fund asset
  - 5.35.9 enter into any contract, arrangement or agreement with any person (including a member or Trustee) for the sale, letting or other dealing with the Fund, or to provide any goods or services by or from that person or Beneficiary
  - 5.35.10 establish, purchase, acquire, promote or conduct any company, business, undertaking or scheme and either solely or with any person and to sell,

*Trustee vs a Member?  
The Trustee looks after the Self-Managed Superannuation Fund.  
The Member is the lucky person who will, one day, get the assets in the SMSF. The Member gets the assets after retirement.*

- transfer, dispose of or wind-up any such company, business, undertaking or scheme
- 5.35.11 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
- 5.35.12 appropriate, wholly or partly, any Fund asset to satisfy any interest a person may have in the assets of the trust or any benefit determined to be paid to or apply for the benefit of, a Beneficiary
- 5.35.13 units (including sub-units) in a unit trust by subscription or purchase (including joint subscription or purchase), fully paid or partly paid, irrespective of whether their issue involves a contingent or reserve liability
- 5.35.14 futures, options, synthetic investments, hedging, swapping, policies, insurance policies, annuities, instalment warrants, receipts
- 5.35.15 deposits and loans (secured or not) with a bank, friendly society, building society, credit co-operative, trustee company, and any registered or unregistered financial institution or any person
- 5.35.16 mortgage, lien, pledge, charge, guarantee (including the member, Trustee and other persons providing personal guarantees and other covenants) any of the Fund assets, or future Fund assets, or otherwise including for the security for any borrowing, raising, facility, gearing, guarantee, indemnity, lease, underwriting and contractual obligations including for the performance of any person's contractual obligations, plus borrowing and raising money from any person (including the Trustee or member), with or without security on any basis, based on the lending bank requirements, irrespective of whether the Fund is in accumulation or pension phase, including:
- (a) via an overdraft
  - (b) on a full, part or limited recourse or instalment warrant; and
  - (c) via a limited recourse borrowing arrangement, with or without:
    - (i) a bare trust, holding trust or custodian; and
    - (ii) borrowings under Part 7 and sections 67A–67B SIS Act

for any reason or purpose including:

- (d) to enable the Trustee to pay a surcharge or advance instalment, including under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*
- (e) enable the Trustee to settle a transaction including to acquire any of the securities listed in section 67(3)(a) SIS Act
- (f) to purchase or gear any current or future Fund asset
  - (i) provide financial assistance in any form, including a loan, to a member, relative of a member, Beneficiary, Dependant or Trustee
  - (ii) allowing members to choose between investment strategies
  - (iii) investing in anything set out in the investment strategy, including in assets that allow:



- (g) investing in a way to maximise member returns taking into account the risk associated with the investment
- (h) diversification and the benefits of investing across a number of asset classes in a short, medium or long-term investment strategy

### **No conflict of interest**

5.36 to ignore the fact that the Trustee may have a direct or indirect interest in the exercise of that power, or may benefit directly or indirectly from its exercise, including where the Trustee obtains or may obtain an interest or benefit as a director, officer, shareholder, partner, unitholder or beneficiary of a company to whom the Trustee enters into a transaction, arrangement or becomes a party to

*Usually, the Trustees and Members are the same persons. The law requires that if you are one of the members then you must also be a trustee as well.*

### **Death Benefit Agreement**

5.37 to set up rules and forms for death benefit agreements including to give notice given by a member or Beneficiary to the Trustee under Regulated Superannuation Regulations

### **Varying the Trust**

- 5.38 vary this Deed orally, by oral declaration, written resolution, minute or deed, prospectively or retrospectively, except a variation cannot reduce or adversely affect the rights or amount of a member to accrued entitlements or Benefits that have already arisen
- 5.39 unless otherwise expressly stated, any variation of the Deed does not vary any death benefit agreement or payment of pension

### **Insurance against Fund losses**

5.40 take out insurance for a potential liability against the Trustee, member or Fund for any reason including as a result of any act or omission

### **Winding up the Fund**

5.41 to wind up the Fund at any time and for any reason (including if there is no members) pursuant to any rules set out by the Trustee

### **Applicable law**

5.42 from time to time, stating the law that governs this Deed, and if there is no statement then the Deed is governed by the law of the location as evidenced by the Trustee's address in this Deed and the parties consent to the exercise of that jurisdiction by the courts of that place

### **Appointing and Delegating**

- 5.43 appointing and replacing (without the need to give reason or notice) any person including a valuer, auditor, administrator, administration manager, investment manager and custodian (including a custodian for any lending, lending trust, bare trust, limited recourse borrowing arrangement, property warrants and instalment warrant)
- 5.44 valuing, obtaining actuarial and adequacy certificates and auditing the Fund

- 5.45 delegating to another person, including one or more Trustees, any power or duty on any terms the Trustee thinks fit, including by appointing an attorney under a power of attorney and altering or revoking any delegation including any power of attorney
- 5.46 the Trustee is not bound to follow the advice of a person including a person the Trustee has appointed as an expert or otherwise

## **General Powers**

- 5.47 stating business days and times it is available and unless otherwise stated 9am–5pm Monday to Friday excluding public holidays in all States and Territories of Australia
- 5.48 establishing a final and interim fund-earning rate
- 5.49 allowing an employer or any person to become a participating employer
- 5.50 where excess contributions (including excess contributions under sections 292-20 and 292-85 Tax Act) were accepted then releasing such funds to the member or any government authority, agency or Responsible Authority
- 5.51 initiating, conducting and settling legal proceedings

## **6. Forfeiting Benefits**

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- 6.1 A member forfeits a contingent, prospective or current entitlement Benefit if the Trustee determines that the member is declared or likely to be declared mentally ill or the member has no Dependants upon or after death. The Trustee applies the forfeited Benefits as the Trustee sees fit including to members, Forfeited Benefits Account or other account
- 6.2 The Trustee may apply the amounts in a Forfeited Benefits Account in anyway including to supplement member's Benefits

## **7. Death Benefits**

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- 7.1 The Trustee must pay the full Benefit for the member standing to the credit of the accumulation account, and any pension account residue either as a lump sum, or as one or more pensions or annuities, or both. The Trustee pays the death benefit on the death of a member under:

### **Death benefit agreement (binds Trustee don't expire)**

- 7.2 On the death of a member or beneficiary who has a death benefit agreement:
- 7.3 the death benefit agreement prevails over any binding death benefit notice or non-binding nomination form
- 7.4 the Trustee must pay, or apply, the relevant benefit according to the death benefit agreement
- 7.5 A death benefit agreement need only be signed by the Trustee and the relevant member or beneficiary, and replaces any previous death benefit agreement. On signing, the terms of any death benefit agreement form part of this Deed
- 7.6 If there is any inconsistency between the death benefit agreement and the remaining provisions of the Deed, then the terms of the death benefit agreement prevails to the extent of that inconsistency
- 7.7 If part of the death benefit agreement is invalid because it directs the Trustee to pay Benefits to a person to whom those death benefits may not be paid under

Superannuation law, then such disallowed benefits are not so paid but applied as per the remainder of the death benefit agreement which remains valid or under the Superannuation law

### **Binding death benefit notices (binds Trustee but expires after 3 years)**

- 7.8 After the death of a member or Beneficiary who has given the Trustee a binding death benefit notice (binding nomination forms) the Trustee must comply with that notice
- 7.9 Non-binding nomination forms (not binding on Trustee)
- 7.10 If after the death of a member or Beneficiary, not all death benefits are paid or applied under a death benefit agreement or binding death benefit notice, the Trustee must pay or apply the relevant benefit in the way the trustee would have done under the SIS Legislation

*An exception to this rule is if you have a company as your Trustee. This is called a 'Corporate Trustee'. In that instance, the only Trustee, by law, must be your company. The only directors of the corporate trustee must be the members.*

### **Discharge of Trustee**

- 7.11 If a Dependant, Beneficiary, legal personal representative, relative or other person receives any part of a Benefit then that discharges the Trustee from liability for that Benefit. The Trustee is not responsible for seeing how the Beneficiary uses the Benefit.
- 7.12 The Trustee is at liberty to require any person who may receive a Benefit to give a guarantee and indemnity on any terms for the benefit of the Trustee and any other person

## **8. Trustee**

- 8.1 The Trustee may appoint any person as an additional or a replacement Trustee at any time, including the following:
  - 8.1.1 a deceased member's legal personal representative including from the date of the member's death
  - 8.1.2 a member's legal personal representative, including while they hold an enduring power of attorney for the member or while the member is under a legal disability
  - 8.1.3 a member's legal personal representative, parent or guardian including where the member is a minor
  - 8.1.4 a corporation, natural person or other entity
- 8.2 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
- 8.3 No security or 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
- 8.4 The Trustee is discharged from all liability for a Benefit where the Trustee pays the Benefit in good faith to a person or another person, on behalf of that person, they believe is entitled to it

- 8.5 The Trustee is at liberty to require any person to provide a guarantee and indemnity and complete statutory declarations on any matter, on any terms for the benefit of the Trustee or any other person
- 8.6 Neither the Trustee nor its employees are liable for anything done or not done in connection with acting as Trustee, and are indemnified from the Fund with a lien on the Fund, unless:
- 8.6.1 the Trustee failed to act honestly
  - 8.6.2 the Trustee intentionally or recklessly failed to exercise a reasonable degree of care
  - 8.6.3 the Trustee incurred a monetary penalty under a civil penalty order under the Superannuation law
- 8.7 The Trustee is not taken to be in contravention of the Deed or in breach of trust if the Trustee does or omits to do anything that is in contravention of covenant or requirement if the contravention is waived by the Responsible Authority
- 8.8 The Trustee may exercise any power or action (and also record it) orally, by oral declaration, written resolution, minute or deed, prospectively or retrospectively

## **9. Members & Beneficiaries**

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- 9.1 A person becoming or seeking to become a member is bound by this Deed
- 9.2 No Beneficiary has any interest, claim, right, estate or title in any part of the Fund, Fund income or any other income
- 9.3 No Beneficiary is under any obligation to personally indemnify the Trustee or a creditor of the Fund or any sub-trust established under this Deed for any liability, loss, damage or expense either incurred or suffered in connection with the Fund. The Trustee is unable to exercise against a Beneficiary any right by way of subrogation or indemnity
- 9.4 The member, Beneficiary, Dependant, employer and any other person provides information that it has or can obtain, produces such evidence, completes such forms, does such acts and executes such documents that is, in the Trustee's opinion, necessary or desirable for any reason, including the managing and administering of the Fund. The Trustee may act on that information but is not required to verify the information.

## **10. Notices**

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- 10.1 Any notice or other written communication is given to a person if it is handed to the person or delivered to the person's last known address via Australia Post or by any other means

## **11. No Partnership**

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- 11.1 The Deed does not create the relationship of partners, or of principal and agent, between the Trustee and the members nor as between each other

## **12. Signing the Deed in different locations**

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The Deed may be executed by executing identical documents (counterpart)

## 13. Interpreting the Deed

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### 13.1 In the Deed unless the context indicates a contrary intention:

- 13.1.1 headings are for convenience only and do not affect interpretation
- 13.1.2 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; superannuation fund, person in the capacity as a trustee, custodian or personal representative of a deceased estate
- 13.1.3 the plural includes the singular and vice versa and a reference to a gender includes every other gender or no gender
- 13.1.4 a reference to the Deed includes a reference to any amendment, variation, supplemental deed or replacement from time to time
- 13.1.5 references to any party to this Deed include its successors or assigns
- 13.1.6 references to laws in the Deed refer to those laws as amended or otherwise consistent with the overall purpose of the Deed and does not create an anomaly
- 13.1.7 reference to any statute, subordinate legislation or instrument includes all statutes, subordinate legislation and 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
- 13.1.8 if any part of the Deed is invalid, that does not affect the validity of the remainder of the Deed

*This Deed of Variation updates your Trustees and Members, even if they are dead or otherwise incapacitated.*

Bind with the SMSF Deed and Print out as required, from time to time  
**Beneficiary Nomination - What happens to my Superannuation when I die?**

**'Death Benefit Table'**

Person (full name) or, to leave it to your estate (Will) tick 'Legal Personal Representative'	Date of Birth	Relationship to me (eg Spouse, child, financially dependent, interdependency relationship)	Percentage of my Death Benefit
			%
			%
			%
			%
			%
<input type="checkbox"/> Legal Personal Representative	N/A	Not applicable	%
<b>The total must equal</b>			<b>100%</b>

ONLY COMPLETE AND SIGN ONE OF THE THREE OPTIONS BELOW:

**Non-Binding Nomination Form (this direction is not binding on the Trustee) Option One**

I ..... of ..... DOB: .....  
 being a member of the Kapetanovic Future Fund direct the Trustee of the Kapetanovic Future Fund that, on my death, the persons named in the above Death Benefit Table are to receive the proportion stated of the benefit payable upon my death. I acknowledge that this direction to the Trustee is a non-binding death benefit notice and that the Trustee retains the discretion as to how to apply any benefit payable on my death.

Signed on ..... 20.... Member signature: .....

Witness Name: ..... Witness signature: .....

**Binding Death Benefit Notice (Binding on Trustee, expires after 3 years) Option Two**

I ..... of ..... DOB: .....  
 being a member of the Kapetanovic Future Fund direct the Trustee of the Kapetanovic Future Fund that, on my death, the persons named in the above Death Benefit Table (being one or more of my dependants or my legal personal representative) are to receive the percentage stated of the benefit payable upon my death. I acknowledge that this direction to the Trustee is a binding death benefit notice and the direction is binding on the Trustee.

Member Signature .....

We, the two witnesses below, declare that we are over 18 years of age, we are not mentioned or benefit under the Death Benefit Table and witnessed the Member signing this Notice in both our presence. All 3 of us were together during the entire signing.

Name of 1<sup>st</sup> Witness ..... Signature of 1<sup>st</sup> Witness .....

Address of 1<sup>st</sup> Witness .....

Name of 2<sup>nd</sup> Witness ..... Signature of 2<sup>nd</sup> Witness .....

Address of 2<sup>nd</sup> Witness .....

**Death Benefit Agreement (this direction binds the Trustee and never expires) Option Three**

1. This deed is between ..... (Member) of ..... DOB: ..... as member of the Kapetanovic Future Fund and the Fund's Trustee as named below.
2. This deed is an addition to the deed known as the self-managed superannuation deed called the Kapetanovic Future Fund
3. This deed is not a binding death benefit notice given (including how that term is used under regulation 6.17A *Superannuation Industry (Supervision) Regulations*). Therefore, it continues in force until amended or terminated and it does not end after 3 years as binding death benefit notices are required to do.
4. On signing this deed, this deed forms part of the Kapetanovic Future Fund Deed.
5. The Member directs the Trustee that, on the Member's death, the persons named in the above Death Benefit Table (which is incorporated into this deed) receive the proportion stated in Death Benefit Table of any benefit that is payable.
6. The Trustee consents to act on the direction and confirms that the Trustee is required to understand their right to require the trustee to act on the direction of the Trustee that the persons nominated must be a dependent member and that the proportion of the benefit is certain.
7. If compliance with Superannuation law prevents any part of the benefit from being paid then that part of the benefit is dealt with under the Superannuation law.
8. The Member may terminate this deed by serving a notice on the Trustee. The deed may be replaced by the Trustee and the Member signed deed terminates.

*Build Self Managed Super Fund  
Trustee, Member and Deed Update*

<https://www.legalconsolidated.com.au/smsf-trustee-and-member-update/>

Signed sealed and delivered as a deed on .....20.....

Member Signature .....

We, the two witnesses below, declare that we are over 18 years of age, we are not mentioned or benefit under the Death Benefit Table and witnessed the Member signing this Notice in both our presence. All 3 of us were together during the entire signing.

Name of 1<sup>st</sup> Witness ..... Signature of 1<sup>st</sup> Witness .....

Address of 1<sup>st</sup> Witness .....

Name of 2<sup>nd</sup> Witness ..... Signature of 2<sup>nd</sup> Witness .....

Address of 2<sup>nd</sup> Witness .....

Signed by the Trustee:

**[When Trustees are individuals]**

Trustee one name: ..... Trustee one signature .....

Witness name: ..... Witness Signature .....

Trustee two name: ..... Trustee two signature .....

Witness name: ..... Witness Signature .....

Trustee three name (if any): ..... Trustee three signature .....

Witness name: ..... Witness Signature .....

Trustee four name (if any): ..... Trustee four signature .....

Witness name: ..... Witness Signature .....

**[When the Trustee is a company]**

The common seal of ..... ACN .....  
in its capacity as trustee, under s127(2) *Corporations Act 2001* in the presence of:

.....  
Director/Secretary

.....  
Director (if any)

### Witness Declaration - 1st Witness

I, ..... Date of Birth .....  
of ..... in the State of ..... state:

1. that on .....20..... I witnessed ..... (**Member**) signing the attached Death Benefit Agreement between the Member and the Trustee of the Kapetanovic Future Fund as the 1<sup>st</sup> Witness.
2. that I also, at the same time, witnessed the signature of the other witness (**2<sup>nd</sup> Witness**) who also witnessed the Member's signature.
3. I confirm that all three of us, being myself, the Member and the 2<sup>nd</sup> Witness, were present at the same time during the entire signing process.
4. The Member stated that the Member understood the nature of the Death Benefit Agreement to both myself and the 2<sup>nd</sup> Witness.
5. I confirm that I am not related to the Member, not mentioned in the Death Benefit Agreement and have no pecuniary interest in the Member's Estate or superannuation benefits either directly or indirectly.

Signed, Sealed and Delivered as a deed on .....20.....

1<sup>st</sup> Witness Name: ..... 1<sup>st</sup> Witness Signature .....

Name of person witnessing the 1<sup>st</sup> Witness signature in this declaration: .....

and signature:.....

### Witness Declaration - 2nd Witness

I, ..... Date of Birth .....  
of ..... in the State of ..... state:

1. that on .....20..... I witnessed ..... (**Member**) signing the attached Death Benefit Agreement between the Member and the Trustee of the Kapetanovic Future Fund as the 2<sup>nd</sup> Witness.
2. that I also, at the same time, witnessed the signature of the other witness (**1<sup>st</sup> Witness**) who witnessed the Member's signature.
3. I confirm that all three of us, being myself, the Member and the 1<sup>st</sup> Witness, were present at the same time during the entire signing process.
4. The Member stated that the Member understood the nature of the Death Benefit Agreement to both myself and the 1<sup>st</sup> Witness.
5. I confirm that I am not related to the Member, not mentioned in the Death Benefit Agreement and have no pecuniary interest in the Member's Estate or superannuation benefits either directly or indirectly.

Signed, Sealed and Delivered as a deed on .....20.....

2<sup>nd</sup> Witness Name: ..... 2<sup>nd</sup> Witness Signature .....

Name of person witnessing the 2<sup>nd</sup> Witness signature in this declaration: .....

and signature:.....



<b>Information on who gets your Superannuation when you die</b>
-----------------------------------------------------------------

**Under the Superannuation laws, you can only nominate:**

**Individual**

1. Your husband, wife, spouse, defacto spouse and same sex partners (suffice to say you can have more than one)
2. Children including adopted, step, from your spouse and other children under the *Family Law Act 1975*
3. Individuals that are 'financially dependent' on you – calculated at the exact moment of your death (this can be a good friend's child that you have been paying schools fees and giving other financial supports). Superannuation law defines this term more widely, than under the taxation system.
4. Someone in an 'interdependency relationship' with you (such as two spinster sisters who live together, often with financial and domestic support between the two of them) – calculated at the moment of your death

**Legal Personal Representative**

5. If you write in the exact expression 'Legal Personal Representative' then all, or the percentage you select, of your superannuation goes, at death, to the executor of your Will to be distributed under your Will. If you have no valid Will, then it goes to your administrator to be distributed according to a government formula.

**Can I nominate my friends?**

6. Sorry, but the Superannuation law only allows direct nomination to a financially dependent and interdependency relationship. To get around this you can leave your Superannuation at death to your 'Legal Personal Representative'. You can then nominate such friends in your Will to receive your Superannuation.

Keep this form with your SMSF Deed and copy it, if and when new members join your fund.

### Membership Application to the Kapetanovic Future Fund

**Member Applicant Full Name:**

**Date of Birth:**

**Address of new Member:**

**Employer (if any):** \_\_\_\_\_ **Trustee's Tax File No. (TFN):** \_\_\_\_\_

1. After reading, keeping a copy of and understanding the Kapetanovic Future Fund (Deed) and Product Disclosure Statement, I agree to be bound by the Deed and the Superannuation law as defined in the Deed
2. I consent to my tax file number being made available to the Trustee, government authorities and professional advisers. I **enclose** a signed Tax File Number Declaration (available from the ATO in hard copy only ordering at [https://www.ato.gov.au/uploadedFiles/Content/IND/Downloads/TFN\\_declaration\\_for\\_m\\_N3092.pdf](https://www.ato.gov.au/uploadedFiles/Content/IND/Downloads/TFN_declaration_for_m_N3092.pdf)).
3. I am aware of the other members of the fund and their relationships to me including, any employee and employer relationship and family relationship and acknowledge that I am not a disqualified person under the SIS Regulations.
4. I have read, understood and signed the attached ATO's Trustee Declaration (Download Trustee Declaration from [https://www.ato.gov.au/uploadedFiles/Content/SPR/Forms/Trustee%20declaration\\_SPR\\_n71089\\_19272.pdf](https://www.ato.gov.au/uploadedFiles/Content/SPR/Forms/Trustee%20declaration_SPR_n71089_19272.pdf))
5. Below I have ticked (and **enclose** the completed document) on how I choose to deal with any Superannuation (death benefit) that I may have left when I die:
  - (a) **death benefit agreement** which binds the Trustee and does not expire
  - (b) **binding death benefit notices** (binding nomination forms) which bind the trustee but which expire after 3 years unless renewed
  - (c) **non-binding nomination forms** which do not bind the Trustee and don't expire

Signed by the applicant

..... Date: .....

Keep this form with your SMSF Deed and copy it, if and when new members join your fund.

### Membership Application to the Kapetanovic Future Fund

Member Applicant Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address of new Member: \_\_\_\_\_

Employer (if any): \_\_\_\_\_ Trustee's Tax File No. (TFN): \_\_\_\_\_

1. After reading, keeping a copy of and understanding the Kapetanovic Future Fund (Deed) and Product Disclosure Statement, I agree to be bound by the Deed and the Superannuation law as defined in the Deed
2. consent to my tax file number being made available to the Trustee, government authorities and professional advisers. I **enclose** a signed Tax File Number Declaration (available from the ATO in hard copy only ordering at [https://www.ato.gov.au/uploadedFiles/Content/IND/Downloads/TFN\\_declaration\\_for\\_m\\_N3092.pdf](https://www.ato.gov.au/uploadedFiles/Content/IND/Downloads/TFN_declaration_for_m_N3092.pdf)).
3. I am aware of the other \_\_\_\_\_ to me including, \_\_\_\_\_ any employee and empl \_\_\_\_\_ acknowledge that I am not a disqualified \_\_\_\_\_
4. I have read, understood \_\_\_\_\_ Declaration [https://www.ato.gov.au/uploadedFiles/Content/IND/Downloads/TFN\\_declaration\\_for\\_m\\_N3092.pdf](https://www.ato.gov.au/uploadedFiles/Content/IND/Downloads/TFN_declaration_for_m_N3092.pdf) (Download Trustee Decl \_\_\_\_\_ 20declaration\_S \_\_\_\_\_ [https://www.ato.gov.au/uploadedFiles/Content/IND/Downloads/TFN\\_declaration\\_for\\_m\\_N3092.pdf](https://www.ato.gov.au/uploadedFiles/Content/IND/Downloads/TFN_declaration_for_m_N3092.pdf))
5. Below I have ticked (and \_\_\_\_\_ choose to deal with any Superannuation (death benefit) that I may have left when I die:
  - (a) **death benefit agreement** which binds the Trustee and does not expire
  - (b) **binding death benefit notices** (binding nomination forms) which bind the trustee but which expire after 3 years unless renewed
  - (c) **non-binding nomination forms** which do not bind the Trustee and don't expire

You can build this document here:  
<https://www.legalconsolidated.com.au/smsf-trustee-and-member-update/>

Signed by the applicant

..... Date: .....