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Your Reference: SMSF – Trustee Update
Enquiries: Adj Professor, Dr Brett Davies
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Monday, 22 March 2022

Genovese Holding Pty
34 Abinger Drive
Richmond VIC 3121
Australia

Build this legal document at
[https://www.legalconsolidated.com.au/
self-managed-superannuation-fund-
trustee-update/](https://www.legalconsolidated.com.au/self-managed-superannuation-fund-trustee-update/) – telephone us, we
can help you complete the questions.

Adj Professor, Dr Brett Davies – Partner

Dear Trustee,

Trustee Update

Deed of Variation for the Genovese Retirement Fund

Thank you for instructing us to prepare the attached **Self-Managed Superannuation Fund – Trustee Update**

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.)

Removing Trustees – get their consent

There is a good reason in wanting to share membership of your SMSF with others such as your spouse, children, in-laws and business partners. After all, SMSFs 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 (or all members as directors) 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 cash in the Superannuation fund. The ATO successfully declared the fund non-complying for all the other members as well.

You can't however just remove 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 can't be rolled over to another fund with the member's written consent.

If you can't 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 confirm that we have not been instructed to give advice as to whether the Deed that first established the Genovese Retirement Fund or any variations, if any, since then allows for this Deed of Variation. Please check with your accountant or with us to confirm whether your Deed should be updated to comply with the latest superannuation laws.

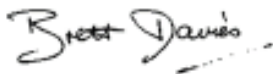
Do not forget your obligation notify the Australian Tax Office within 28 days of signing these documents, of your updated Superannuation fund details.

Remember, this document prints best in Adobe Acrobat Reader.

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

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
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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.

We have a 100% money back guarantee. For any reason you can return the document to us for a full refund.

*Dr Brett Davies
Partner*

Legal Consolidated Barristers & Solicitors

**Minutes accepting New Trustee and Resignation of Outgoing Trustee of the
Genovese Retirement Fund**

Held at

on day of20 (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 Genovese Retirement Fund and be bound for the Genovese Retirement 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)
4. The Outgoing Trustee ceases to act as Trustee and the cessation is accepted by the Incoming Trustee.

We, the Members, as set out below, consent to the change of Trustees (if the Trustee is deceased or lacks mental capacity then their Executor, legal personal executor or guardian signs):

.....
Member No. 1

.....
Member No. 2

.....
Member No. 3

.....
Member No. 4

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:

.....
Signed by the person that chaired the meeting

Build the legal document at <https://www.legalconsolidated.com.au/self-managed-superannuation-fund-trustee-update/> – telephone us. We can help you answer the questions.

On our law firm's website, you:

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2. Receive legal advice
3. Get a signed letter on our law firm's letterhead with the legal document
4. We take responsibility for the legal document

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Adj Professor, Dr Brett Davies - Partner



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Trustee Update – Deed of Variation for the Genovese Retirement Fund

This Deed of Variation is made by:

Outgoing Trustee:

Marco Genovese
of 34 Abinger Drive, Richmond VIC 3121, Australia

Lucia Genovese
of 34 Abinger Drive, Richmond VIC 3121, Australia

New Trustee:

Genovese Holding Pty Ltd ACN 254 984 332
34 Abinger Drive, Richmond VIC 3121, Australia

1 Trust Variation

The Genovese Retirement Fund was established by a deed date deed is amended from time to time (Deed).

The Trustee has satisfied itself, or sought professional advice, the variations, such as the variations contained in this Deed of Variation.

The Genovese Retirement Fund contains assets and has not vested.

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**).

2 Dictionary

Unless a contrary intention appears:

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

SIS Act *Superannuation Industry (Supervision) Act 1993*

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

SIS Act and SIS Regulations

Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011

Superannuation (Financial Assistance funding) Levy Act 1993, Superannuation (Resolution of Complaints) Act 1993, Superannuation (Rolled-Over Benefits) Levy Act 1993

Superannuation Industry (Supervision) Consequential Amendments Act 1993, Superannuation Supervisory Levy Amendment Act 1993

Occupational Superannuation Standards Amendment Act 1993

Superannuation Act 2005, Superannuation Act 1990, Superannuation Act 1976

Superannuation (Productivity Benefit) Act 1998

Superannuation Benefits (Supervisory Mechanisms) Act 1990

Superannuation (Family Law - Superannuation Act 1922) Orders 2004 and Superannuation (Family Law - Superannuation Act 1976) Orders 2004

The SMSF Trustee update is done as a Deed. Minutes are not enough.

Our Trustee update includes:

1. updating legislation to allow you remove and change Trustees
2. removing any outgoing trustees
3. adding any new trustees complies with *Moss Super Pty Ltd v Hayne [2008] VSC 158*

Superannuation Guarantee (Administration) Act 1992

SIS Regulations Superannuation Industry (Supervision) Regulations 1994

Superannuation law includes:

- (a) SIS Legislation
- (b) any common law or law including the *Corporations Act 2001* and the *Social Security Act 1991*, relating to superannuation or the taxation of superannuation
- (c) any lawful requirement to the Fund by a Responsible Authority
- (d) any other body that has responsibility for the regulation of superannuation including an Asset-test Exempt Pension
- (e) changes to any superannuation law after the date of this Deed
- (f) any proposed law or lawful requirement that the Trustee believes may have retrospective effect

3 Trustee

Outgoing Trustee:

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

Marco Genovese
of 34 Abinger Drive, Richmond VIC 3121, Australia

Lucia Genovese
of 34 Abinger Drive, Richmond VIC 3121, Australia

(Outgoing Trustee)

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

New Trustee:

The following be appointed to the position of Trustee.

Genovese Holding Pty Ltd ACN 254 984 332
34 Abinger Drive, Richmond VIC 3121, Australia

(New Trustee)

The New Trustees accept the appointment.

4 Severing to reduce tax and stamp duty

The Deed and this Deed of Variation is interpreted to reduce taxes, imposts, duties and stamp duty (including State and federal) (collectively Taxes) and avoid any illegality. It is interpreted to comply with the SIS Act, SIS Legislation and SIS Regulations at all times. 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. confirming any trustees that are remaining
5. reduction of tax clauses for use by the Trustee
6. ensuring that there is no resettlement
7. grandfathering structures and defined benefits

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.

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

This Deed of Variation is supplemental to the Deed. This Deed of Variation is read down so that no mandatory taxation law, duty or impost (both State and federal) or Responsible Authority from time to time, is contravened that would lead to an unfavourable taxation position. Every part of this Deed of Variation, every clause and term is subject to the Deed in all Australian jurisdictions.

If any of the terms of the Deed are inconsistent with the terms of this Deed of Variation then the terms of this Deed of Variation prevails. However, this Deed of Variation does not constitute a resettlement of the Genovese Retirement Fund or anything in the Deed of Variation establishes a resettlement of the Genovese Retirement Fund then the applicable words are read down so as not to constitute a resettlement. The Deed of Variation is interpreted to avoid any illegality. If any clause is illegal, it is severed from the Deed of Variation to the extent of the illegality. The Deed of Variation is read down so that no mandatory superannuation law, duty or impost (both State and federal) or Responsible Authority from time to time, is contravened that would lead to an unfavourable taxation position. Every part of this Deed of Variation, every clause and term is subject to the Deed in all Australian jurisdictions.

8. *augmenting trustee powers to comply with the latest Australian budget*
9. *dealing with conflict of interest between trustees*
10. *increasing power of appointment and delegation for the trustees*

6 Protecting grandfathered structures & defined benefits

In house asset rules

If any clause in this Deed of Variation adversely affects the grandfathering provisions for any structures or transactions that the Genovese Retirement 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.

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.

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 Augmentation of Trustee Powers

In addition to the powers set out in the Deed, 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:

No conflict of interest

to ignore the fact that the Trustee may have a direct or indirect interest in the Fund, 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, partner, unitholder or beneficiary of a third party with whom the Trustee enters a transaction, arrangement or becomes involved

Varying the Trust

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

Applicable law

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

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)

valuing, obtaining actuarial and adequacy certificates and auditing the Superannuation Fund

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

the Trustee is not bound to follow the advice of a person including a person the Trustee has appointed as an expert or otherwise

11. allowing meetings via the Internet and other forms of communication
12. minutes to confirm and accept the Deed of Variation
13. covering letter confirming the above (for accountant's due diligence file)

8 Trustee

The Trustee may appoint any person as an additional or a replacement Trustee at any time, including the following:

a deceased member's legal personal representative including from member's death

a member's legal personal representative, including while they hold attorney for the member or while the member is under a legal disability

a member's legal personal representative, parent or guardian including if member is a minor

a corporation, natural person or other entity

No Person dealing with the Trustee need be concerned to inquire into the powers of the Trustee for any dealing or the exercise by the Trustee of the Trustee's powers, authorities and discretions

No security or Security given is invalid because of an error or omission of fact on the part of the Trustee or its legal adviser or any breach of duty whatsoever

The Trustee is at liberty to require any person to provide a guarantee or complete statutory declarations on any matter, on any terms for themselves or any other person

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 Superannuation Fund with a lien on the Superannuation Fund, unless:

the Trustee failed to act honestly

the Trustee intentionally or recklessly failed to exercise a reasonable degree of care

the Trustee incurred a monetary penalty under a civil penalty order under the Superannuation law

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 Decision making in more than one place and Notices

This Deed of Variation may be executed in different locations by signing identical documents and all counterparts together constitute the Deed of Variation.

Meetings and decision making can be conducted in more than one place via telephone, the Internet or other means.

Notices may be provided via the post or email.

10 Interpreting the Deed

In the Deed of Variation unless the context indicates a contrary intention:

headings are for convenience only and do not affect interpretation

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

The SMSF Trustee update

allows you to:

1. Remove humans – replace with a company
2. Remove company – replace with humans as trustees
3. Remove humans and replace with humans
4. Remove a company and replace with another company

the plural includes the singular and vice versa and a reference to any gender includes every other gender or no gender

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

references to any party to this Deed of Variation include its successors or permitted assigns

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

reference to any statute, subordinate legislation or instrument in subordinate legislation and instruments amending, modifying, or re-enacting or replacing them and a reference to a statute includes legislation and instruments made under that statute

if any part of the Deed of Variation is or becomes invalid, then the validity of the remainder of the Deed of Variation.

Executed as a Deed on 20

SIGNED, SEALED AND DELIVERED by
Marco Genovese

The Deed of Variation only updates the Trustees. It does not update the members of the Self-Managed Superannuation Fund. Your accountant and financial planner can change the 'members' by minute.

Marco Genovese

(Signature of witness)

(Name of witness)

SIGNED, SEALED AND DELIVERED by
Lucia Genovese

Lucia Genovese

(Signature of witness)

(Name of witness)

EXECUTED for and on behalf of
Genovese Holding Pty Ltd
ACN 254 984 332

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 2nd)

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