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Friday, 6 October 20

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12 Provincial Road
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Australia

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<https://legalconsolidated.com.au/family-trust-update-exclude-a-beneficiary/> -

telephone us, we can help you complete the questions.

Adj Professor, Dr Brett Davies - Partner

Dear Trustee,

Beneficiary Exclusion in the Peruzzi Wealth Trust

Attached to this letter is a Deed of Variation to amend the Peruzzi Wealth Trust seeking to:

1. Exclude one or more beneficiaries in a Family Trust
2. Change or confirm the Trustee of the Family Trust
3. Change or confirm the Appointors of the Family Trust
4. Change or confirm the Back-up Appointor of the Family Trust

How to print your document

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100% scale (turn off 'fit to page')
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We only act for one of the Parties

We only act for the first named Remaining Trustee, if any. If there is no Remaining Trustee, then we only act for the first named New Trustee (our client).

We act for no other persons. To put the matter beyond doubt, we do not act for any other person that has been involved, is currently involved or will ever be involved in the Peruzzi Wealth Trust. We act for none of the parties involved in the Deed of Variation to amend the Peruzzi Wealth Trust other than our client.

Specifically, we do not act for any Appointor or Back-up Appointor.

All persons need to seek their own independent advice including legal advice.

We do not act for Backup Appointors

Further to the above, for any avoidance of doubt, we do not act for:

- the Backup Appointors
- the current, past and future Trustees of the Family Trust other than our client
- the Beneficiaries, either previous, current or in the future

It is open for Appointors to change their Trustee and Backup Appointors. This is at any time. And this can often be done without the permission or knowledge of the Trustee and Backup Appointors. This is like a Will maker changing their Will.

No advice provided

We have provided no advice, including no legal advice, including whether this document and how it is drafted is best for or suits the client's needs and purposes. If unsure then the accountant, adviser and other professional advisers should be spoken to first, this includes the families' lawyer. This is before any person signs or acts on this Peruzzi Wealth Trust Deed of Variation.

Power to amend your Family Trust deed

We confirm that we have not reviewed or otherwise updated the Trust Deed or any variation of the Trust Deed. You need to check that that attached Deed of Variation is permitted under the Trust Deed or any variations of the Trust Deed.

If the Trust Deed or any variations do not allow the Family Trust to be so amended, then this attached Deed of Variation does not operate.

We have provided no advice as to whether a local Supreme Court order is required in respect of approving this Peruzzi Wealth Trust Deed of Variation.

Review your Family Trust Deed and Variations regularly

Monitor your Family Trust Deed and Deeds of Variation to ensure it remains up-to-date and have it reviewed regularly by your lawyer and accountant.

Why do Family Trusts have Beneficiaries?

All Australian trusts must have three things:

1. Trust Assets (e.g. cash, shares, property, intellectual property)
2. Trustee (holds only the 'legal' title of the Trust Assets – owner only in name)
3. Beneficiaries (true or equitable owners of the Trust Assets)

Centrelink does not like you being a potential Beneficiary in someone else's Family Trust?

Centrelink may not be happy that a person on Centrelink may get a distribution from someone else's Family Trust. To pacify Centrelink this Deed of Variation agrees that the current Trustee and Appointor, and future Trustees and Appointors, will never distribute to the person on Centrelink in the future.

Ex-spouse still in your Family Trust?

The Family Law property settlement is over. The dust has settled. But you find that your ex is still a potential beneficiary in 'your' Family Trust. This Deed of Variation confirms

that the current Trustee and Appointors and future Trustees and Appointors will in the future not distribute to your 'ex'.

Fettering the Trustee's Discretionary Power

The Trustee of a Family Trust, working under the direction of the Appointor, can distribute to any of the many beneficiaries. This Deed of Variation is 'fettering' that discretion. It is no longer possible to distribute to the Excluded Beneficiary.

To increase the likelihood of this Deed of Variation working, we also seek to amend the Family Trust Deed via the same Deed of Variation. Also, we require you to either confirm or change:

1. Your current Appointors (controllers)
2. Your Backup Appointors
3. Trustee, again you confirm the current Trustees or you can change the Trustee

Protecting Beneficiary Rights

While the removal of a beneficiary may be a legitimate process for valid reasons, if a Trustee attempts to remove a beneficiary via this fettering, for reasons that are not aligned with the trust deed or acts in unfair manner then the Beneficiary may seek to have themselves reinstated through the Courts.

What is a trust resettlement?

A trust resettlement occurs when a trust is varied or amended to the extent that it becomes a 'new trust'. A trust resettlement can also occur when the trust property is transferred to a new trust. We are not giving any advice including no legal advice as to whether this Deed of Variation constitutes a 'resettlement' for tax purposes, Capital Gains Tax or transfer (stamp) duty or some other purpose.

While every state and territory have their own rules, the information below is for federal taxes and is of a general nature only:

How is a resettlement triggered?

The law relating to what constitutes a resettlement changes over time. For example, in 2001 after *FCT v Commercial Nominees of Australia Ltd* the ATO released a Statement of Principles which stated that a resettlement occurs when:

'there was a 'fundamental change' to the trust relationship and that a change in the 'essential nature and character' of the trust relationship can result in the creation of a new trust.'

The Statement warned that even a minor change might trigger a resettlement in certain circumstances. However, following the 2011 decision in *Commission of Taxation v Clark*, [2011] FCAFC 5 the ATO withdrew its Statement of Principles. The ATO confirms that its old approach was wrong and no longer valid.

In Clark's case, major changes were made to the members of the trust and the trust property. However, these changes are not a resettlement of the trust. The ATO has consequently revised its view. It now argues that Clark is correct.

According to Clark, it is now acknowledged that a trust will undergo resettlement if the alteration to the trust disrupts the ongoing essence of a trust. These may include changes to the:

- the terms of the trust deed
- the trust property
- the members of the trust

The updated view from the ATO, Taxation Determination 2012/21, also mentions that as long as there has been a valid use of the amendment power or court approval, adjustments to the trust deed will not cause a resettlement unless the change:

- terminates the existing trust; or
- leads to a particular asset being subject to a separate charter of rights and obligations such as to give rise to the conclusion that that asset has been settled on terms of a different trust.

Legal Consolidated is not giving advice on either matter.

The authority to make changes in the trust deed is crucial for determining the types of alterations allowed in the trust. Without the required power to amend or a Court order, you cannot modify the trust deed. Have your own lawyer check this if you are unsure – before you sign the Deed of Variation.

What is the effect of resettlement?

Resettling a trust has substantial tax consequences. When the trust property is transferred to a new trust, it activates several provisions of the Income Tax Assessment Act 1997 (Cth), including a capital gains tax event that the trustee must cover. Moreover, the interruption of the trust's ongoing nature implies that any losses or gains from the original trust cannot be shifted to the new trust.

How to avoid trust resettlements

Before making any changes to a trust deed, it's advisable to consult with a legal professional. Even if the trust deed has an amendment provision, it's crucial to carefully review the trust deed to ensure that the power explicitly allows the intended amendment.

Local state Trust Acts may allow you to change your trust deed

That may be correct. But you cannot assume that all the changes mentioned in various state Trusts Acts apply when the trust deed specifies otherwise. It is also crucial that amendments made under a power comply with any procedures outlined in the deed. Also Capital Gains Tax, for example, is a federal tax. Not a state tax.

Legal Consolidated has provided no advice or legal advice on any matters, including tax and resettlement issues. Speak to your professional advisers before you sign this Deed of Variation.

Updating your Wills and Power of Attorneys

We suggest that the Appointors consider reviewing and, if required, also updating their:

- **3-Generation Testamentary Trust Wills** (if you already have a Legal Consolidated Will then you can update it for free, as often as you wish)
- **Enduring Power of Attorney**
- **Medical/lifestyle Power of Attorney**
- **Loan Agreements** between family members
- **Deed of Gifts and Deeds of Debt Forgiveness** – for any money that the family trust owes to beneficiaries (Unpaid Present Entitlements)

And when you have a company as trustee then consider updating or preparing:

- **Power of Attorney for a company**
- **Shareholders Agreement**
- **Division 7A Loan Agreement**

Why change the Appointor and Backup Appointor (if required)

The Guardian, Appointor, Principal, Nominator and all other controlling positions as referred to in the Trust Deed update and change for many reasons.

A person may wish to retire as controllers of the Family Trust. Perhaps a person wants to add a spouse as an additional Appointor and Guardian. The Appointor, Guardian, Principal, Nominator and any other controlling position as referred to in the Trust Deed Update seeks to:

- remove Appointors and Guardians
- remove any dead Appointors and Guardians
- confirm any remaining and new Appointors and Guardians

Dead Appointors?

What if the current Appointor is already dead?

For example, Mum and Dad are the Appointors. Mum dies. Dad continues as the Appointor. Dad is happy to control the Family Trust by himself. Nothing in the Trust Deed, any variations or Mum's Will states anything different.

Therefore, all Dad is doing in the Appointor Update is formally removing Mum as Appointor. Mum's executor or next of kin signs on Mum's behalf. The Family Trust may have a system or procedure for dealing with dead Appointors.

As stated above you need to check to make sure that the Trust Deed and any variations of the Trust Deed allows this to happen.

Dead Appointor's estate being challenged?

If the outgoing Appointor is dead before this attached Deed of Variation is signed and their estate is or will potentially be challenged, then speak with the Probate and litigation lawyers before you sign this attached Deed of Variation.

Appointor subject to a Family Law matter?

If there is a potential of a family law matter dispute, then speak to your family lawyer before you sign or seek to rely on this attached Deed of Variation.

This is for a number of reasons as the family lawyer will mention. Not least of which the Family Court may have the power to render void this Deed of Variation.

Trustee vs Appointor

Who is in charge of a Family Trust? Is it the Trustee that 'owns' the assets?

No, the Appointor is god. The Appointor bosses the Trustee. The Trustee looks like it is in control, as it has the assets in its name. However, the Trustee takes its marching orders from the Appointor.

Can the Appointor control the corporate trustee of the Family Trust?

From time to time, the trustee of a family trust is either a:

- **human** - called a 'human trustee'
- **company** - called a 'corporate trustee'

The Appointor is god. The Appointor can usually sack the trustee. So, the most important part of control and succession planning, in a Family Trust, is the Appointor.

But it is useful if the current Appointor 'controls' the trustee as well. This may not always be possible because of:

1. asset protection
2. family law
3. the trustee of the family trust is a human - and you cannot control a human. You can own the shares in the corporate trust, but you cannot own shares in a human
4. even if the trustee is a company and you own the shares in the company, a company can be replaced at any time, by the current Appointor. This is generally for no (stamp) duty and no Capital Gains Tax

Should the Backup Appointor control the Trustee of the Family Trust when the Appointor dies?

It is also useful if, when the Appointor dies the "Backup Appointor" controls the trustee as well. Again, this is often not possible because of the four reasons above.

Specific Gifts in a Will are not usually a good idea, as it dates the Will. However, the 'last to die' Appointor can gift, in their Will, the shares in the corporate trustee to the designated Backup Appointor.

Another approach is for the 'last to die' Appointor to leave a signed, but undated, transfer form for the shares to the designated Backup Appointor. Your accountant can prepare this blank share transfer for you.

Can the Appointor change the Corporate Trustee at any time?

Having the shares in the corporate trustee going to the Backup Appointors gives the impression that the Backup Appointors are guaranteed control of the Family Trust. But that is certainly not the case.

The current Appointors are free to change their mind. This is as to the control of the Family Trust. The current Appointors can change the Appointor, the Backup Appointor

and the Trustee. Therefore, the shares in the current corporate trustee of the Family Trust may be of little value.

We only act for the Appointors, as stated above.

The Backup Appointors need to seek their own independent legal advice.

Can the current Appointors secretly change the Backup Appointors in their Family Trust?

Current Appointors can rewrite their Wills and POAs as often as they wish. They can, for example, cut out children and loved ones from their Wills.

Similarly, Mum and Dad, as the current Appointors, can build another Deed of Variation of their Family Trust and change the Backup Appointors. The Appointors can:

- **Change the Backup Appointors:** While the Appointor or Appointors are alive and of sound mind, they can change the succession planning of their Family Trust as often as they wish. This is no different to them changing their minds in a Will.
- **Change Trustee:** While not so important, similarly, the Appointor can change the trustee of their Family Trust, as often as they wish. There is often no (stamp) duty or CGT when a trustee of a Family Trust is changed.
- **Vest the Family Trust:** The Appointors can direct the Trustee of the Family Trust to merely vest all the assets of the trust to one of the beneficiaries. In which case the Family Trust has no assets, anyway.

And Appointors do change their trustees. This is he particularly the case if the wrong child or loved one now or will have control of the corporate trustee of the Family Trust in the future.

Just as you do not know when a parent has changed their Will, a child cannot know if their parents have changed the succession planning of their Family Trust.

Why update the trust rules?

As to the updating the rules of your Trust, we make the following comments:

Legal documents need to be maintained on a regular basis. This is because there are constant changes to legislation, trust law, tax law and case law.

As an introductory point on the importance of having an appropriately updated Trust Deed, Chapter 31 of the CCH Australian Master Tax Guide states that:

“The law of Trusts, the provisions of [the Tax Act] and the Trust loss measures are complex. A lack of appreciation of the problems and an inadequately drafted Trust Deed can give rise to serious problems, sometimes long after the establishment of the Trust. Forward planning is particularly important, e.g. by identifying a class of beneficiaries that is appropriate not only for the Settlor(s) but also for their successors, and by including in the Trust Deed mechanisms to minimise or resolve any disputes that may occur. Resettling the Trust or amending the Trust Deed may have undesirable stamp duty consequences (although rectification of

the Trust Deed is possible, to give effect to the true intention of the parties, e.g. Carlenka 95 ATC 4620).”

We have sought to update your Family Trust for the following:

- (a) The general “Streaming provisions”
- (b) Franking credits
- (c) Attribution relating to distributing capital gain to beneficiaries
- (d) The ongoing extension of the Capital Gains Tax regime since 1985
- (e) The majority of Appointors being able to take all the proceeds of the Trust over the minority
- (f) The ability to indemnify out of Trust assets
- (g) Further powers of Amending the Trust Deed
- (h) Asset Preservation
- (i) Bamford Decision including defining ‘income’ in regards to the ATO’s latest views
- (j) Loss Recoupment

We have not updated your Family Trust for any other purposes such as Trust losses, foreign beneficiaries, foreigner land tax and stamp duty surcharges, pension entitlements or transfer (stamp) duty exemptions. If you require us to consider other matters, then please let us know.

The Streaming Provisions

Since November 1992, the Commissioner of Taxation has issued rulings for the ‘streaming’ of income. ‘Streaming’ allows you to avoid unnecessary capital and income tax being payable by the Trustee and beneficiaries of the Trust for example. Whether the allocation of say a franked dividend income to one beneficiary to the exclusion of another is effective for tax purposes depends on the terms of the Trust instrument.

The fully updated streaming now in your Family Trust provides support so that income distributed to a beneficiary retains the character it had when it was first derived by the Trustee.

You, as the Trustee, may now place different classes of income into separate income accounts. Thus, it is possible to trace the source of each Trust distribution to a particular beneficiary or to a particular class of beneficiary.

Unless the Trustee clearly reflects what it has actually done in accumulating the Trust Income and in distributing it to particular beneficiaries, it will be most difficult to establish, after the event, what class of income was distributed to particular beneficiaries.

This has significant advantages for Family Trusts. However, the Commissioner has stated that the Trustee must be validly empowered to selectively allocate those components of Trust income to particular beneficiaries and exercise that discretion. That is, the Trust Deed itself must contain the ability to stream income.

Here is one example:

Your Trust sells a rental property and realises a capital gain. This capital gain is received into the Trust and is included in the net income of the Trust for that financial year. Your new streaming provisions in your Trust allow that amount to be treated as a capital gain

in the hands of a particular beneficiary you nominate from the Trust. Now, if fully franked dividends were also part of the Trust's income, you can ensure that the dividends are not 'mixed' with the capital gains tax income.

Your advisers may suggest that the dividend (or foreign tax credit) be utilised by a resident individual beneficiary with high marginal tax rates. In contrast, net capital gains can be best utilised by another beneficiary with carry-forward capital losses, low income beneficiaries with carry-forward revenue losses and minor beneficiaries able to receive excepted Trust income.

In effect your new streaming allows you to distribute one type of income to one beneficiary and another type of income to a different beneficiary.

Franking Credits

At times your Trust may include gross income from franked dividends. A resident beneficiary in your Family Trust (other than a Trustee of another Trust estate) is entitled to a franking rebate if:

1. a share of net the Trust income is included in the assessable income of the beneficiary; and
2. some or that entire share of net Trust income is attributable to a franked dividend included in the assessable income of the Trust estate.

Notwithstanding wide discretionary powers being conferred on a Trustee, a Trustee's discretion to selectively allocate dividend income to a beneficiary to the exclusion of another may be fettered by the terms of the Trust or by Trust law operative in the relevant jurisdiction. You don't want that. Therefore, we have inserted a clause in your Trust Deed which expressly empowers you to selectively allocate particular types of income to beneficiaries.

Your accountant may suggest that you distribute that part of the net income to those beneficiaries who are able to take the greatest advantage of franking, foreign tax and any other non-refundable tax credits and rebates available to the Trust. Those beneficiaries who have made a loss or are at a low tax rate (especially if lower than the company tax rate) may derive little benefit from these credits.

Attribution to distribute capital gain to beneficiaries

When the Trust derives a net capital gain in the net income of the Trust, then the Trustee needs the power to distribute that part of the net income to certain beneficiaries. The beneficiaries are treated by the Commissioner of Taxation as having accrued a capital gain. It may be that one beneficiary has carried forward capital losses and another has carried-forward revenue losses. In this case there are tax advantages in distributing the net capital gain to the beneficiary who has suffered the prior capital losses.

For some Family Trusts the Commissioner may take the view that either:

1. both beneficiaries are treated as having been presently entitled to a proportionate amount of the net capital gain and other net Trust income; or
2. the net capital gain loses its character and therefore no part of the Trust distribution is characterised as being a net capital gain.

Both outcomes are generally unfavourable.

You now have the power to attribute.

Ongoing extension of the Capital Gains Tax regime

Your Deed of Variation allows you to account separately and keep separate any funds received from different sources. Your Trust Deed is amended to allow the Trustee to account separately and keep separate any funds received from different sources. For example, sources may include:

- capital gains
- any dividend income (of all natures)
- income having an allowance for depreciation (inclusive of depreciation of buildings and plant and equipment)
- income from Superannuation investments or annuities
- income from deceased estates and Trusts (including testamentary Trusts) whether trading, investment or otherwise
- franked distributions
- trading income (including credit sales)
- interest
- primary production income
- income from personal exertion
- rents and other property income
- royalties
- foreign source income

Majority of Appointors take all trust assets over minority

Over the life of your Family Trust the Trust you may have, for example, 3 or more Appointors at one time. If this is the case, then there is opportunity for a majority of Appointors to give themselves all the proceeds of the Family Trust. This leaves the minority with nothing.

The attached Deed of Variation seeks to amend the Family Trust so that the Appointors act, at all times, unanimously.

Trustee Power to Indemnify

The Trustee's ability to act is governed by each state's legislation (under Trustees Acts) and by the terms of the Trust Deed. The Trustee has now been given stronger powers to guarantee and indemnify the performance of contracts and debts and obligations of all kinds to any person and to mortgage or charge the Trust's property in support of any guarantee and indemnity.

The power to guarantee allows the Trustee to become personally liable for the specific amount of the contract or debt and obligations. The power to indemnify allows the Trustee to become personally liable for any loss or legal costs that the other party may suffer from the contract or debt and obligations.

Banks usually require that Family Trusts provide for both powers before they will loan money to a Family Trust.

Your Family Trust fully allows the Trustee to guarantee the performance of contracts and debts and obligations.

Definition of Net Income

A Trust distribution often allows you to pay less tax. You normally distribute to the family Beneficiaries that are on the lowest tax rates. If you fail to distribute, then the Trustee (as the tax payer) pays the tax at the highest marginal tax rate.

You distribute Trust income to the pool of potential beneficiaries. If you don't distribute any part of the Trust income, then the Trustee is assessed on that part of the 'net income' at the highest marginal tax rate.

As the court in *Bamford v Commissioner of Taxation* [2009] FCAFC 66 said:

"The only purpose of the concept of "income of the Trust estate" in section 97(1) is to determine the extent of the apportionment as between the beneficiaries and the Trustee. It is not, in itself, a metric by which tax is imposed."

There is a difference between 'Trust income' within the taxation legislation. Net income of the Trust estate is the taxable income of the Trust. A beneficiary is entitled to the Trust income. But they are taxed, instead, on the net income.

Your Deed of Variation allows you to:

1. define Trust income appropriately; and
2. make valid distributions.

Loss Recoupment

The Trustee has the power to determine not to recoup carried forward capital losses, to have distributable income, which can be applied to various beneficiaries. If you did not have that power, there could be a situation arising where there is no income of the Trust estate to distribute. According to the ATO, the Trustee is assessed on the capital gain. To make matters worse a corporate Trustee is taxed on the grossed up capital gain, without recourse to the tax legislation.

Other matters - Asset Preservation

While you have not sought any advice on asset protection, people often ask the question 'if I go bankrupt are the assets in the Family Trust lost?' This question is complex and needs us to meet together to work out an answer. Asset protection cannot be done in isolation. It is a wider issue that needs careful planning.

However, I am happy to make one generic comment. The person that suffers the burden of holding directorships and risky assets, like a trading business, often won't hold assets in their own name. Let's call that person the husband (man of straw). The wife (woman of substance) holds the shares, all of the family home and other assets in her name. If a person follows this strategy then, in the Family Trust, the husband holds the position of Trustee (or is sole director of the corporate Trustee) and the wife holds the position of Appointor. The Appointor is god and can sack the Trustee at whim. If the Trustee goes feral or bankrupt, then the Appointor merely sacks the Trustee. This is simplistic and is generic advice only.

What if the wife runs away with the assets? It doesn't much matter to the Family Court that the assets are currently under the wife's control. The Family Court divides the assets according to what is equitable under the Family Act. This is often 50/50 if you have been

together for over 10 years and there are no children or the children no longer live at home. Let me know if you need your legal rights explained further.

Any Stamp Duty or CGT?

Stamp Duty is payable when assets are transferred from one person to another person. Capital Gains Tax is payable when you 'dispose' of an asset. However, by changing the Appointors, Trustees and updating the Family Trust Deed you generally do neither. The class of beneficiaries remains the same. There is no change to the object or purpose of the Family Trust.

There is generally no stamp duty or CGT payable in Australia. But check with your local conveyancing lawyer.

Banks only look at original trust deeds. They do not look at certified copies of trust deeds

We refer to the enclosed Minute regarding you needing to hold and retain, forever, original trust deeds. If you do not retain original signed trust deeds, you will not be able to open bank accounts or borrow money.

Copies are not good enough. Certified copies are not good enough. Ensure that both you and your accountant retain all original trust deeds and variations of the trust deed. They are precious and usually impossible to replace.

Removing Appointors

Appointors are the people in control of the Family Trust; they tell the Trustees what to do. When an Appointor is removed, they give up a lot of rights.

Most Trust Deeds do not (and should not) have methods of sacking the Appointors. It is not that type of Trust relationship or document. Generally, the Appointor has to resign or die to be removed – and even then, the Trust Deed may have an order of succession. If you are in a conflict situation you need to apply to the court (typically the Supreme Court) for intervention.

What happens if the Trustee is dead or of unsound mind?

If a Trustee has died (or the Corporate Trustee company is wound up) then that person can no longer be a Trustee.

If the Trustee is dead, then the Executor or legal personal representative may be allowed to sign on the Trustee's behalf. Alternatively, if there is a power in the Family Trust to do so, then the Appointor or one of the Appointors can sign on the outgoing Trustee's behalf.

If the Trustee is of unsound mind, then the person holding the Power of Attorney or Administration Order may be able to sign for the Trustee.

Again, check with the Family Trust Deed and any variations of the Family Trust Deed. If it is not possible to so change the Trustee, then the Appointors may need to apply to the Court for help.

Do the Appointors have mental capacity to sign the Deed of Variation?

The attached Deed of Variation can be attacked. This is by arguing that some or all the parties that signed the Deed of Variation lacked mental capacity.

To sign a Deed, or enter into any legal agreement, you need to be of sound mind.

To reduce the chance of someone arguing that you lacked mental capacity get a doctor's note. This is to say you are of sound mind. And keep all such doctor notes with your Deed of Variation.

The Trustee also needs to get a doctor's certificate. And where the trustee of the Family Trust is a company, then the director needs to get a doctor's certificate. This is to confirm that the director is of sound mind.

To put the matter beyond doubt every human that signs the attached Deed of Variation needs to have a doctor's certificate to say they are of sound mind.

The doctor's note should be obtained on or around the date that the attached Deed of Variation is signed.

Are the Appointors tricked or coerced into signing the Deed of Variation?

Another way to render the Deed of Variation of no effect is to argue that the Appointors did not sign the Deed freely. There is no free will.

The person making the attack argues duress, undue influence or elder abuse. Duress is when you are forced to do something against your own will.

In *Mercanti v Mercanti* [2016] WASCA 206 the Court stated for a change of Appointor:

"... the power to appoint a new Appointor may be susceptible to the operation of the doctrine of undue influence.

For present purposes, the principles of undue influence, including in relation to the relationship between parent and child, are sufficiently stated in *Permanent Mortgages Pty Ltd v Vandenberg*.

Relevantly, at trial, the appellants' case was one of presumed undue influence, said to arise from an antecedent relationship between Michael and Tyrone, the nature of which was that Tyrone was in a position to exercise dominion, power or ascendancy over Michael in relation to matters concerning the family business and the affairs of the trust.

The signing of the attached Deed of Variation should be treated to the same high standard that is given to the signing of a Will. For example, the people potentially benefiting should not be anywhere near the Appointors when they sign. In particular, the Backup Appointor (including their spouse and related parties) should not be in the vicinity of the Deed of Variation when it is being signed.

This reduces the argument that the Backup Appointor brought illegitimate pressure to force the signing of the Deed of Variation.

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

Yours sincerely,

Legal Consolidated

LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

Build the legal document at
<https://legalconsolidated.com.au/family-trust-update-exclude-a-beneficiary> -
telephone us. We can help you answer
the questions.

- Select **START FOR FREE** to build your document.
- Answer the questions. Read the hints. Educates and Empowers.
- Telephone us to review your answers (start the free building process first).
- Select **LOCK AND BUILD** and enter your credit card details.
- Within seconds, you get our cover letter and finished legal document.



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Your Reference: db;bkd; Peruzzi 14662666
Our Refemoe: 9570810105745
Direct Telephone: 1800 141 612

Friday, 6 October 2023

Peruzzi Holdings Pty Ltd ACN 654 995 616
12 Provincial Road
Lindfield NSW 2070
Australia

Trust Opinion Certificate

The Peruzzi Wealth Trust – Legal Opinion to Lending Institution

This Trust Opinion Certificate relates solely to the above Deed of Variation:

Peruzzi Holdings Pty Ltd ACN 654 995 616
12 Provincial Road, Lindfield NSW 2070, Australia
(Trustee)
Trustee of the Peruzzi Wealth Trust (Trust).

We confirm that:

- a) The Trustee is empowered to grant security and guarantees over the assets from time to time of the Trust and so bind the Trust assets. Specifically, as per the Deed of Variation under the Trustee Powers:

borrow and raise money from any person, on a full or non-recourse basis, with or without security, mortgage or charge, including via an overdraft

provide any guarantee or indemnity for payment of money or for the performance of any person's contractual obligations

mortgage, lien, pledge, charge, guarantee or otherwise provide the Trust Fund for security for any borrowing, raising, facility, guarantee, indemnity, lease or other contractual obligation, whether such contractual obligations relate to the trust or not

give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust Fund as may be required to secure the payment or the performance of any contractual obligation under or in connection with any transaction

However, the law firm that prepared the Deed of Variation, its agents and assigns, expressly state that they are giving no person, including the client, any advice as to the obligations and role of a guarantor or similar positions.

Legal Consolidated has never acted for guarantors. Legal Consolidated does not provide guarantee advice letters. Legal Consolidated does not practice in guarantees and similar areas of law.

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

notwithstanding anything to the contrary, the Trustee may enter into any relationship (legal or otherwise) irrespective of whether there is a direct or personal interest, with any person, including related parties (even if the Trustee is a sole trustee) to do all things (including all things set out in this clause) in such manner, on any terms (favourable, unfavourable or otherwise), whether there is a conflict or not, as the Trustee thinks fit.
- d) The terms of the Deed of Variation do not restrict the right of the Trustee to be fully indemnified out of the assets of the Trust to satisfy any liabilities incurred by the Trustee arising out of transactions.
- e) The Trustee is empowered to open and operate bank accounts.
- f) The Trustee is empowered to enter into contracts personally with the Trust.
- g) The Trustee must act in the Beneficiaries' best interests at all times.
- h) The Deed of Variation does not seek to effect a re-settlement of the Peruzzi Wealth Trust Trust.

The Trustee is advised by this letter to seek written advice from a Financial Adviser and Accountant as to whether any transaction contemplated is beneficial to the Beneficiaries to the Trust.

We have not viewed and we cannot comment on any papers, correspondence or documents (such as the original Trust Deed and any other variations to the Trust Deed, if any, from time to time). We can only comment on this attached Deed of Variation. We have not reviewed any other documents. We have not reviewed the Trust Deed nor any amendments to the Trust Deed. We have not reviewed the Trust Deed nor any amendments as to the powers to amend such documents.

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

This letter is based on the assumption that the Trust Deed, any variations and this Deed of Variation and signatures in the Trust Deed are genuine. And the Trust Deed and any variations authorise, allow and permit the Deed of Variation to be in full force and effect.

This matter is now closed.

The file has been closed.

We are instructed by our client that any correspondence from the lender, or any other persons, to be immediately sent back to the lender or such persons without further recourse to our client or the lender.

The lawyer signing this letter is from the law firm Legal Consolidated Barristers & Solicitors, is a Barrister of the High Court Australia and holds a current unrestricted practising certificate from the Legal Practice Board.

Yours sincerely,



LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

Build The Family Trust Update to get rid of unwanted Beneficiaries. This document does five things:

- 1. excludes someone as a beneficiary of a Family Trust*
- 2. confirms or changes your Trustees*
- 3. confirms or changes the Appointors and Guardians*
- 4. confirms or changes your Back-up Appointors (these are the people that control the Family Trust after you die)*
- 5. fully updates your Trust Deed (rules)*

Resolution by the Trustees

Held at

On day of20.....

Peruzzi Holdings Pty Ltd ACN 654 995 616
12 Provincial Road, Lindfield NSW 2070, Australia
(Trustee)
Trustee of the Peruzzi Wealth Trust (Trust).

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

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

Person chairing the meeting: It was resolved that the person chairing the meeting.

Upon tabling the fully executed Deed of Variation (in du
Wealth Trust Trust IT WAS RESOLVED that:

1. the Trustee adopts the duly executed Deed of V
Wealth Trust Trust
2. acknowledges that the law firm that prepared th
some of the Appointors, as set out in the coveri
3. the law firm does not act for the Appointors or th
which need to get their own independent legal a
4. the law firm that prepared the Deed of Variation
whether the Trust Deed or any variation allows t
5. authority is given to allow the Deed of Variation
lending institutions, as required
6. the Deed of Variation be lodged for stamp duty,
7. because of its value and that banks will not ope
the bank does not cite original Deeds, the two d
were protected and stored as follows:
 - a. one Deed of Variation to the accountant
 - b. and the other Deed of Variation is to be kept by the Trustee of the Peruzzi
Wealth Trust Trust in the secretary folder
8. the Trustee conducts an audit to ensure that it has original Deeds of the following:
 - a. the Trust Deed that established the Trust
 - b. any subsequent Deeds of Variation
9. the Appointors unanimously consent to the Deed of Variation being so executed
and adopted

*This Deed of Variation to get rid of a
Beneficiary in a Family Trust assumes:*

- *that the Appointor, Guardian,
Principal or similar power
holder (Controller) has the
power to do so.*
- *that no other consent is
required from anyone to
update the Family Trust, E.g.
the family court, if you are
divorcing, has 'given' you sole
control of your Family Trust.*

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

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

.....Person chairing the meeting

Each Appointor signs below:

- the trustee consents to the Deed of Variation. The Trustee signs both the Deed of Variation and the minutes.
- the current Appointors consent to the Deed of Variation. The current Appointors sign the Deed of Variation and the minutes.
- the Family Trust deed allows these changes, or you have a Court order allowing you to do so.

- it is morally correct and supported in the best interests of the Family Trust that the person be excluded as a Beneficiary.
- each party signing the Deed of Variation is of sound mind and has a doctor's certificate to confirm this (which is kept with the Deed of Variation).
- each party signing the Deed of Variation is doing so with full knowledge without any duress or pressure from family members or other people.

**Deed of Variation of Family Trust to
Update the Peruzzi Wealth Trust
Beneficiary Exclusion**

9570810105745

Your Reference: db;bkd; Peruzzi 14662666

This Deed of Variation is made by:

Remaining Trustee:

Peruzzi Holdings Pty Ltd ACN 654 995 616
12 Provincial Road, Lindfield NSW 2070, Australia

Remaining Appointor:

Brian Sheffield
2 Colo Street, Arana Hills QLD 4054, Australia

1. Background

The Trustee seeks to vary the Trust Deed from the date of this Deed of Variation or as otherwise stated by minute and there is consent to do so by the Appointors.

2. Operative

- 2.1 The Peruzzi Wealth Trust was created by a deed dated 18 October 2012 as settled by the Settlor being Tom Angelo Massina, together with any amending deeds (Trust Deed).
- 2.2 The funds in the Peruzzi Wealth Trust are not vested.
- 2.3 All parties to this Deed of Variation have been given a copy of the Trust Deed and any updates and other deeds of variations, if any.
- 2.4 All parties to this Deed of Variation have been provided with a signed copy of this Deed of Variation.
- 2.5 The parties have examined the Trust Deed (or sought legal advice) and are satisfied that there is power to revoke, add to and vary the terms of the trusts constituted by the Trust Deed.
- 2.6 The Appointors, Appointers, Guardians, Principals, Nominators and all other similar controlling positions as referred to in the Trust Deed have examined the Trust Deed (or sought legal advice) and are satisfied that there is power to revoke, add to and vary the terms of the trusts constituted by the Trust Deed.
- 2.7 The persons acting in the capacity of trustee have examined the Trust Deed (or sought legal advice) and are satisfied that there is power to revoke, add to and vary the terms of the trusts constituted by the Trust Deed.
- 2.8 The law firm preparing this Deed of Variation has not reviewed the Trust Deed or any variations of the Trust Deed as to whether such deeds contain sufficient power to allow for this Deed of Variation.
- 2.9 The law firm preparing this Deed of Variation only acts for some of the Appointors, as set out in the letter enclosing this Deed of Variation. The law firm does not act for any other persons. To put the matter beyond doubt the law firm does not act for the Trustee, any trustees, Backup Appointors or beneficiaries.

Remaining Trustee:

The following confirm that they will continue to hold the position of Trustee.

Peruzzi Holdings Pty Ltd ACN 654 995 616
12 Provincial Road, Lindfield NSW 2070, Australia

(Remaining Trustee)

Remaining Appointor:

The following confirm that they will continue to hold the position of Appointor.

Brian Sheffield
2 Colo Street, Arana Hills QLD 4054, Australia

(Remaining Appointor)

3. Dictionary

Appointor being:

Brian Sheffield
2 Colo Street, Arana Hills QLD 4054, Australia

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

Beneficiary as defined in the Trust Deed under the word 'beneficiary' or similar terms such as 'general beneficiary'

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

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

Default Beneficiaries as that term or similar terms such as 'takers in default', 'primary beneficiaries', 'specified beneficiaries' is used or defined in the Trust Deed

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

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

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

Trust Income unless the Trustee otherwise determines from time to time, the net income of the trust as defined in section 95(1) *Income Tax Assessment Act 1936* (Cth)

Trust Fund includes the settled sum, additional property, undistributed Trust Income, accretions and additions to the Trust Fund from any source and any accumulations of Trust Income

Trustee being:

Peruzzi Holdings Pty Ltd ACN 654 995 616
12 Provincial Road, Lindfield NSW 2070, Australia

Vesting Day the date that the Peruzzi Wealth Trust vests as set out in the Trust Deed

4. Beneficiary Exclusion

The Parties to the Deed of Variation hereby, both singularly and agree and swear, irrevocable, that they will never in the future m benefit the following:

Jon Mathew Jones
10 Victoria Street, Burwood NSW 2134, Australia

Sandra Maria King
6 Beauford Street, Huntingdale VIC 3166, Australia

APB Holdings Pty Ltd ACN 458 671 132
12 Denver Road, Carseldine QLD 4034, Australia

Firstly, remove a Beneficiary from a Family Trust

Firstly and primarily the Deed of Variation seeks to remove a person from your Family Trust. This is so that they can no longer get anything from your Family Trust.

5. Failure to distribute Trust Income or capital

Where the Trustee fails to distribute any:

- 5.1 Trust Income by 30 June in a Financial Year; or
- 5.2 unapplied and undistributed income before the Vesting Day

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

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

6. Trustee Powers

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

Change Beneficiaries

- 6.1 add, remove, redefine, exclude and change Beneficiaries, Default Beneficiaries and classes of Beneficiaries
- 6.2 receive a request from a Beneficiary for that Beneficiary to be removed as such, and either accept or reject such requests under any terms the Trustee deems fit to apply

Distribute

- 6.3 distribute any part of the Trust Income in any Financial Year and part or all of the Trust Fund and any other capital, asset or right, to any Beneficiary in any proportion and to exclude a Beneficiary
- 6.4 distribute any part of the Trust Fund for a Beneficiary's current or future maintenance, education, advancement or benefit of that person in any manner
- 6.5 distribute to a Beneficiaries' parent, guardian or legal personal representative without being responsible for what that person does with the distribution
- 6.6 not be responsible for what is done with any distribution
- 6.7 make an in specie distribution
- 6.8 redefine the definition of Trust Income before or after 30 June
- 6.9 accumulate Trust Income and treat it as trust fund capital
- 6.10 at any time before 30 June in a Financial Year, decide that a distribution of income for that year is to be made solely from income that the Trustee regards as a particular class of income
- 6.11 decide when a Beneficiary becomes entitled to the income or capital Categories of that entitlement
- 6.12 distinguish between income of a particular nature or character or from a particular source (whether referred to in the Tax Act or not) and deal with income of a particular nature or from a particular source in one manner and income of any other nature or character or from any other source in a different manner and classify and create a separate account for any type of income including into any Categories
- 6.13 distribute an amount to a Beneficiary by setting the amount aside in a separate account in the books in the name of the Beneficiary and that amount may be held on a separate trust for such Beneficiary if so determined by the Trustee, as an amount owed to the beneficiary as an interest free debt at call to determine that the Trust Income for a Financial Year, whether, and to what extent, a receipt or outgoing is on account of income or capital or to hold the money as an unpaid present entitlement
- 6.14 separately allocate all or part of the Trust Income or capital whether distributed or accumulated

Vary the Trust Deed

6.15 vary the Trust Deed and this Deed of Variation at any time, in any way, including revoking all the trusts it establishes and changing vesting dates, however, such amendments do not benefit the Settlor or affect a Beneficiary's beneficial entitlement already set aside

Jurisdiction

6.16 declare the law of the jurisdiction that governs the Trust Deed, from time to time and while no declaration is made in the Peruzzi Wealth Trust Deed then the State as it appears in the Settlor's address in the Trust Deed

Terminate Trust Deed earlier than the Vesting Day

6.17 terminate the Trust Deed before the Vesting Day

Dealings with the Trust Fund

6.18 invest in anything, whether or not authorised by the law for investment funds including; life, life endowment, term, trauma or other policy, trusts and funds, deposits and loans (with or without security), hire purchase, bill of sale, personal property (whether income earning or otherwise and whether wasting or not), shares (unlisted or listed on any stock market), stocks, notes, options, debentures and other securities, options, hedging contracts, derivatives, interest rate swaps, interest rate swaps to hedge interest rate exposure, futures contracts, hedging, currency exchanges, foreign currency transactions, warrants and other financial instruments

6.19 advance or lend money to any person, with or without any security, on any commercial or non-commercial terms and at any interest rate, including a zero interest rate

6.20 to advance and lend moneys to, and to borrow and raise moneys from any persons, firms, corporations, bodies, associations or governmental or municipal bodies whether alone or jointly with any other company or person upon such terms with or without security or interest as the Trustee shall deem fit and to secure the repayment of those moneys by mortgaging or charging (by a fixed or floating charge or general security interest or specific security interest or otherwise) any undertaking of the Trustee or any part or all of the Trust Fund including any property which may subsequently be acquired by the Trustee so that it forms part of the Trust Fund; and any mortgage or charge or security interest created or purporting to be created under this clause and Deed is valid in all respects irrespective of the actual application of the moneys borrowed and the rights of the mortgagee or chargee shall take priority in all respects over the rights of any Beneficiary and all other persons whatsoever

6.21 the Trustee is entitled to be indemnified out of the assets for the time being comprising the Trust Fund against liabilities incurred by it in the execution or attempted execution or as a consequence of the failure to execute any the trusts authorities, powers and discretions or by virtue of being the Trustee

6.22 borrow and raise money from any person, on a full or non-recourse basis, with or without security, mortgage or charge, including via an overdraft

6.23 provide any guarantee or indemnity for payment of money or for the performance of any person's contractual obligations

The Deed of Variation to exclude the beneficiary helps prove that the person on Centrelink will never get anything out of the trust.

- 6.24 mortgage, lien, pledge, charge, guarantee or otherwise provide the Trust Fund for security for any borrowing, raising, facility, guarantee, indemnity, lease or other contractual obligation, whether such contractual obligations relate to the Trust or not and the trustee is fully indemnified from the Trust Fund.
- 6.25 give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust Fund as may be required to secure the payment or the performance of any contractual obligation under or in connection with any transaction
- 6.26 deposit securities or documents of title to any real property and chattels with a bank, trust, company, investment broker or like institution in any part of the world
- 6.27 purchase, acquire, sell, transfer, hire, lease, dispose of, manage, divide, encumber or otherwise deal with any chose in action, real or personal property and any Trust Fund
- 6.28 enter into any contract, arrangement or agreement with any person (including a Beneficiary or Trustee) for the sale, letting or other dealing with the Trust Fund, or to provide any goods or services by or from that person or Beneficiary
- 6.29 pay any person (including a Beneficiary and Trustee) for administering the Trust Fund and including paying such persons their usual rate if they are providing professional services
- 6.30 pay out of the Trust Fund any outgoings, costs, charges, taxes, duties and expenses of the trust whether related to the trust or not, and allocate such to any income or capital Categories
- 6.31 exercise all rights and perform all duties of holding shares, stock or debentures in any company
- 6.32 establish, purchase, acquire, promote or conduct any company, business, undertaking or scheme, either in the Trustee's own capacity or in its capacity as trustee (or both), and either solely or with any person and to sell, transfer, dispose of or wind-up any such company, business, undertaking or scheme
- 6.33 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
- 6.34 appropriate, wholly or partly, any asset of The Trust Fund 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
- 6.35 open and operate bank accounts, 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
- 6.36 give receipts, including for money received
- 6.37 underwrite shares, securities or other obligations
- 6.38 grant options (including put and call) including for any of the Trust Fund
- 6.39 become a director, or appoint any person as a director, of any company and be independently paid for such a position
- 6.40 receive any chose in action, real or personal property by gift or by will as additions to the Trust Fund
- 6.41 grant, cancel or redeem an annuity
- 6.42 divide the assets in their own particular form, without first realising those assets, between the Trust Fund and any other trusts established

- 6.43 take any action to protect the Trust Fund
 - 6.44 enter into, manage and vary any arrangement relating to currency exchange, interest rates, interest rate caps, collars, floors or swaps, any currency forward rate agreement and any other financial risk management agreement, derivative and hedge
 - 6.45 mix the Trust Fund with any other money, funds or property, including other trusts' money, funds or property and join with any other person or the Trustee in its personal capacity or as Trustee or any other Trust Fund or both of them in making common investments
 - 6.46 make any election required or permitted at law
 - 6.47 appoint attorneys and managers and delegate the exercise of all or any of the powers or discretionary authorities
 - 6.48 register the Trust Fund in the name of a nominee and not be concerned that a Trust Fund is not registered in the Trustee's name
 - 6.49 grant a power of attorney for fee, remuneration and reward on any terms
 - 6.50 take or not take legal proceedings against a co-trustee for an alleged breach of trust
 - 6.51 for the Trustee to receive remuneration in any form including fees, salary, commission or other remuneration, payable out of the Trust Fund's capital or income
 - 6.52 if the Trustee is engaged in a profession or business, charge usual rates for any work done by the Trustee in their capacity as a professional, partner or employee of the Trustee
 - 6.53 add additional powers by way of minutes (provided that the powers are then exercisable with the Appointor's prior approval or direction) even though and irrespective of the fact that the Trustee, its spouse, partner, associate, Beneficiary or relative of the Trustee has or may have a direct or indirect interest in the method or result of exercising the power or powers conferred directly or indirectly from its exercise;
- notwithstanding anything to the contrary, the Trustee may exercise the powers (legal or otherwise) irrespective of whether there is a direct or indirect conflict of interest between the Trustee and any other person, including related parties (even if the Trustee is a Beneficiary) (including all things set out in this clause) in such manner, and on any terms (favourable, unfavourable or otherwise), whether there is a conflict or not, as the Trustee thinks fit; all such powers can be exercised orally, in writing, by action or by any other means.

Secondly, change the Trustee of your Family Trust?

As well as excluding some people, you may wish to change the Trustee of your Family Trust. This is because, for example, you may no longer like the Trustee.

7. Powers augment the Trust Deed powers

The above Trustee powers are in augmentation and do not reduce the Trustee's powers set out in the Trust Deed.

8. Trustee

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

8.2.2 permission and right to sign and execute

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

8.3 A Trustee may resign as trustee. However, unless the Appointor deems otherwise, the resignation is effective only if the Trustee is re-appointed.

8.4 The Trustee's appointment automatically terminates if the Trustee dies, becomes bankrupt, is wound up or makes an arrangement with creditors or suffers an Insolvency Event.

8.5 Upon ceasing to be a Trustee, the Trustee has no authority to execute or sign the transfers of ownership.

8.6 No person dealing with the Trustee need be concerned with the adequacy of the powers of the Trustee for any dealing with the Trustee, or any of the Trustee's powers, authorities and discretions.

8.7 No security given is invalid because of an error or omission whether of law or fact on the part of the Trustee or its legal adviser or any breach of duty or trust whatsoever.

Thirdly, confirm or update the Appointor (controller)

The Appointor controls the trust. It can hire and fire the Trustee.

Appointors change for many reasons. People may wish to retire as an Appointor.

9. Appointor

9.1 Where there is more than one Appointor they act unanimously in all matters and at all times.

9.2 The Appointor may appoint and amend (including by will) a person as an additional, replacement or back up Appointor on any terms before the appointment is made, including the fettering of such an Appointor's powers.

9.3 If a sole surviving Appointor dies or ceases to exist without a replacement, then the Default Beneficiaries become the Appointors.

9.4 If a human Appointor suffers an Insolvency event, dies, or loses mental capacity then that person ceases to be an Appointor. Except that, if the Appointor is a company, then the Appointor's legal personal representative, in a fiduciary capacity, for so long as that individual Appointor dies.

9.5 If a company is an Appointor and enters into a compulsory liquidation (except for the purposes of amalgamation or reconstruction) or a receiver or manager appointed to any part of its assets, or ceases to exist then that Appointor ceases to be an Appointor.

9.6 The Appointor may unilaterally amend, in any way, the terms of this Deed.

9.7 Appointor's declarations, directions, authorities, minutes and records can be given and retained verbally, electronically or in any other way, except if the law otherwise requires.

- *allows the current Appointors and Guardians to retire or be removed, if dead*
- *confirms those current Appointors who remain as Appointors appoint any new Appointors*

10. Beneficiaries of the Peruzzi Wealth Trust

10.1 No Beneficiary has any interest, claim, right, estate or title in any part of the Trust Fund, Trust Income or any of its income.

10.2 Neither a Beneficiary nor any other person may challenge an exercise of a power or a failure to exercise it or require a reason for its exercise or non-exercise.

10.3 No person, including a Beneficiary, may require, and the give, any account, report or information on the Trust Fund include any Beneficiary, except as required by law.

10.4 The Trustee is not liable to the Beneficiaries for any loss

10.5 No Beneficiary is under any obligation to personally indemnify a creditor of the trust or any sub-trust established under this deed for any damage or expense either incurred or suffered in connection with the trust, or unable to exercise against a beneficiary any right by way of subrogation.

11. No Partnership

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

12. Severing to reduce tax and stamp duty

12.1 The Trust Deed and this Deed of Variation is interpreted to give effect to the duties and stamp duty (including State and Federal) (Taxes) and any clause nonetheless fails to reduce Taxes or is illegal, it is severed, as required, from the Trust Deed or Deed of Variation to the extent of its illegality or in the furtherance of the reduction of the Taxes.

12.2 The Trust Deed and this Deed of Variation are read down to the extent that taxation law or Taxes, from time to time, are contravened that would result in an unfavourable taxation position.

12.3 For land ownership registration requirements, including vesting in the Trustee, then all powers in the Trust Deed and this Deed of Variation are read down or fettered, as required, and vesting restricted, as required, to avoid stamp duty in the relevant jurisdiction.

13. What isn't varied?

All the other terms contained and implied in the Trust Deed remain in full force and effect.

14. Do we use the definitions in the Peruzzi Wealth Trust Deed?

Unless the context otherwise requires, the expressions and expressions of similar import contained in this Deed of Variation have the same meanings as in the Trust Deed. This Deed of Variation does not alter the rights or entitlements of any classes of the Beneficiaries.

15. Deed of Variation versus the Peruzzi Wealth Trust Deed?

This Deed of Variation is supplemental to the Trust Deed within the meaning of the applicable Property Law Act. If any of the terms of the Trust Deed are inconsistent with the terms of this Deed of Variation, then the terms of this Deed of Variation prevail.

HOWEVER, this Deed of Variation in no way constitutes a resettlement of the Trust Deed or any part of the Trust Fund. If anything in this Deed of Variation would otherwise

Fourthly, confirm or change your Backup Appointors

This Deed of Variation, as well as doing the above, allows you to confirm or change who you wish to control the Family Trust after you are dead.

Fifthly, the Family Trust is updated for the latest taxation and legal requirements – as well as kicking out the Beneficiary

Finally, as well as the above four things that the Family Trust Update does, it also does a general cleanup of your Family Trust rules.

19.4 The Trustee irrevocably consents and agrees to be bound by the terms of this Deed of Variation.

19.5 The Trustee irrevocably consents and agrees that at any time the Appointor can remove the Trustee.

19.6 Irrespective of the powers in the Trust Deed and in this Deed of Variation the Trustee consents, as a party to this Deed of Variation, to resign at the direction of the Appointor.

19.7 The parties to the Deed of Variation warrant and irrevocable confirm that:

19.7.1 the Deed of Variation is in full effect and operational.

19.7.2 the Appointor has the power under the Trust deed to remove the Trustee, trustee or trustees and appoint a new trustee or trustees.

20. Further augmentation of Trustee Powers

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

Vary the Trust Deed

20.1 vary the Trust Deed and this Deed of Variation at any time, in any way, by revoking all the trusts it establishes and changing vesting dates, however, such amendments do not benefit the Settlor or affect a Beneficiary's beneficial entitlement already set aside

20.2 may at any time and from time to time by deeds revocable or irrevocable add to or vary all or any of the trusts, terms and conditions hereinbefore contained in the trusts terms and conditions contained in any variation or alteration or addition made thereto from time to time and may in like manner declare any new or other trusts terms and conditions concerning the trust assets or any part or parts thereof the trusts whereof shall have been so revoked added to or varied

20.3 at any time and from time to time, by deeds revocable or irrevocable revoke, add to or vary all or any of the trusts terms and conditions; the trusts terms and conditions contained in any variation or alteration or addition made thereto from time to and in like manner declare any new or other trusts terms and conditions concerning the Trust Deed and assets in the trust or any part or parts thereof the trusts whereof shall have been so revoked added to or varied

21. Trustee provides Power of Attorney

21.1 The Trustee and during such times there are more than one trustee, then each trustee singularly, irrevocable provides and gives the Appointor a power of attorney to the extent that the Appointor can sign on the Trustee's behalf for the resignation of the Trustee and all such related matters.

21.2 By signing this Deed of Variation each Trustee irrevocably appoints and provides a non-renounceable:

21.2.1 power of attorney, even if dead or no longer in existence; and

The Deed of Variation to exclude the beneficiary helps prove that the person on Centrelink will never get anything out of the trust.

21.2.2 permission and right to sign and execute for the Appointor any documents, deeds or attend to any matters to which the Appointor is a Trustee or any other similar matters to which the Appointor is a Trustee.

21.3 This in no way fetters or limits the Appointor's power to vary the Trust for any reason, and without the need to give any reasons to the Trustee.

You can build this document here:
<https://legalconsolidated.com.au/family-trust-update-exclude-a-beneficiary/>

Executed as a Deed on 20

EXECUTED for and on behalf of
Peruzzi Holdings Pty Ltd
ACN 654 995 616

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)

SIGNED, SEALED AND DELIVERED by
Brian Sheffield

Brian Sheffield

(Signature of witness)

(Name of witness)