

## Decision clarifies when SMSF trustee decisions can be challenged

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A key aspect of the superannuation regime is the statutory and common law right for beneficiaries to seek court review of a trustee's decision.

The key principles in this area for all forms of trusts (including superannuation funds) are largely derived from the case of *Karger v Paul* [1984] VR 161.

In that case it was confirmed that a trustee's decision cannot be reviewed unless it is one that on the material before the trustee is one that no reasonable trustee could have made.

This means that provided a trustee can show that in exercising a discretion given in broad and unfettered terms it has performed its duties bona fide and without malice and has given genuine consideration to the exercise of its discretion, rather than act in a perverse or capricious way, there was no reasonable likelihood that the court will intervene.

Given this test, best practice dictates trustees adopted a disciplined and detailed analysis of all possibly relevant issues before reaching a decision and clearly document their considerations.

While documenting all such investigations is critical, it is generally preferable to not formally record the reasons for the final decision as to do so unnecessarily exposes the trustee to a challenge based on having unsound reasons.

The decision in *Williams v Robba* [2025] QSC 203 provides further context of the key rules in this regard. In this case, the approach of the trustees of a self-managed superannuation fund (SMSF) was challenged by aggrieved dependants, despite the trust deed for the SMSF providing that the trustees had absolute discretion in distributing the death benefit.

Relevantly the court confirmed:

1. There is no material difference between the wording of 'absolute and unfettered' (being the term in question in *Karger v Paul* [1984] VR 161) and the wording of 'absolute and uncontrolled' or simply 'absolute' used in this case.
2. It is not a light decision for a court to interfere with a discretionary decision made by a trustee. Thus, a heavy onus lies on a party who seeks review of a trustee's decision, and this is rooted in the courts' traditional reluctance to interfere with trustees' decisions at common law, which reluctance continues in the application of legislation that grants a right to seek review (see *Re Whitehouse* [1981] QSC 245 and *Tierney v King* [1983] 2 Qd R 580).
3. The fact that the outcome of a trustee's decision is plainly unreasonable or unjust is not in itself sufficient reason to permit the court's interference (see *Burns v Burns* [2008] QSC 173).

4. The court is not allowed to criticise or examine the inquiries that were made or not made by a trustee. Rather, the court's function is limited to reviewing whether the trustee gave real and proper consideration to the exercise of the discretion based on the information possessed.
5. To give real and genuine consideration, a trustee may be required to conduct investigations - however the court need not examine the content of those investigations or the adequacy thereof (see *Owies v JJE Nominees Pty Ltd* [2022] VSCA 142).
6. The principles set out in *Karger v Paul* [1984] VR 161 apply to SMSFs in relation to payment of a death benefit in the same manner as for discretionary trusts - that is, there is no higher duty imposed on the trustees of SMSFs when exercising their discretion.
7. Rather, a higher duty for SMSF trustees only applies to decisions that require the trustee to form an opinion, for example in relation to whether a member has met a condition of release and has a right to a payment - that is, where the trustee is obliged by the trust deed to form an opinion, rather than exercise a discretion (see *Finch v Telstra Super Pty Ltd* [2010] HCA 36).
8. Here, the trust deed had no requirements or guidelines in relation to paying out the death benefit, save for the trustees having absolute discretion in determining the shares and proportions received by each dependant, thus the dependants were truly discretionary beneficiaries.
9. In other words, the interests of the dependants under an SMSF to payment of a death benefit are 'a matter of mere bounty, or potential enjoyment of another's benefaction' as is the usual case for beneficiaries of a discretionary trust (see *Finch v Telstra Super Pty Ltd* [2010] HCA 36).
10. While here the decision of the trustee could have been made differently by a reasonable mind, this did not demonstrate that the trustees had made the decision without turning their minds to and carefully considering the material before them about the competing circumstances of each potential beneficiary.
11. In fact, the evidence was that the trustees had contacted all of the dependants and asked them to provide information generally relevant to the distribution of the death benefit. Over the course of weeks' worth of emails, the trustees then contacted the potential beneficiaries asking for more specific details of their financial needs and personal circumstances (contrast this approach with *Owies v JJE Nominees Pty Ltd* [2022] VSCA 142, where inquiries were not made of some of the beneficiaries at all).
12. Ultimately, even if a more stringent duty should in fact be imposed on SMSF trustees, allowing the court to impugn the inquiries made by the trustees, this duty had also been discharged here by the steps taken, and there was no requirement on the trustees to 'ask every single question that may be relevant'.