



Master Strategy Day 2021

A line up of Master Strategists giving you their best high revenue earning SMSF, Tax, Asset Protection and Estate Planning strategies for the year.



March 26 2021 | 8:30am - 5:00pm AEDT | Online Event
Cost: \$195 - 7 CPD and 7 CPE points



Case Study Solutions

Australia – we have a litigation problem



Justice Jeremy Curthoys, who was scathing of lawyers' "indefensible" legal fees. Credit: WA News

Perth

Legal fee scandal: Lawyers 'feast' on Perth family estate

A SUPREME Court judge has launched a scathing attack on lawyers who “feasted” on a small family estate with their “indefensible” legal fees, describing it as a “scandal” that brings the profession into “disrepute”.

Justice Jeremy Curthoys’ withering takedown was aimed at the lawyers involved in the case of Angela Miller, who was contesting the will of her late de facto partner Andre Taylor, who left his entire estate – worth about \$600,000 at the time of the three-day trial last October – to his two adult children, Elizabeth and Philippe.

In a recent judgment, it was revealed the combined legal costs were potentially more than \$500,000 – in a case involving six lawyers, one from interstate, but which only should have had two, according to the judge.

The small estate had been “ravaged” by legal fees, he said.

And Family Provisions claims are nasty

- For lawyers they are a gold mine as it means long term, fully paid fee work with no real chance of a settlement
- Only need to find an eligible person which includes:

Succession Act 2006 No 80

Current version for 1 December 2018 to date (accessed 10 June 2020 at 11:59)

[Chapter 3 Part 3.2 Division 1 Section 57](#)

57 Eligible persons (cf FPA 6 (1), definition of “eligible person”)

(1) The following are *eligible persons* who may apply to the Court for a family provision order in respect of the estate of a deceased person:

- (a) a person who was the spouse of the deceased person at the time of the deceased person’s death,
- (b) a person with whom the deceased person was living in a de facto relationship at the time of the deceased person’s death,
- (c) a child of the deceased person,
- (d) a former spouse of the deceased person,
- (e) a person:
 - (i) who was, at any particular time, wholly or partly dependent on the deceased person, and
 - (ii) who is a grandchild of the deceased person or was, at that particular time or at any other time, a member of the household of which the deceased person was a member,
- (f) a person with whom the deceased person was living in a close personal relationship at the time of the deceased person’s death.

Note. Section 60 sets out the matters that the Court may consider when determining whether to make a family provision order, and the nature of any such order. An application may be made by a tutor (within the meaning of the [Civil Procedure Act 2005](#)) for an eligible person who is under legal incapacity.

Note. “De facto relationship” is defined in section 21C of the [Interpretation Act 1987](#).

Know where the money is and why?

\$7TN

AUSTRALIA'S GENERATIONAL PROFILE

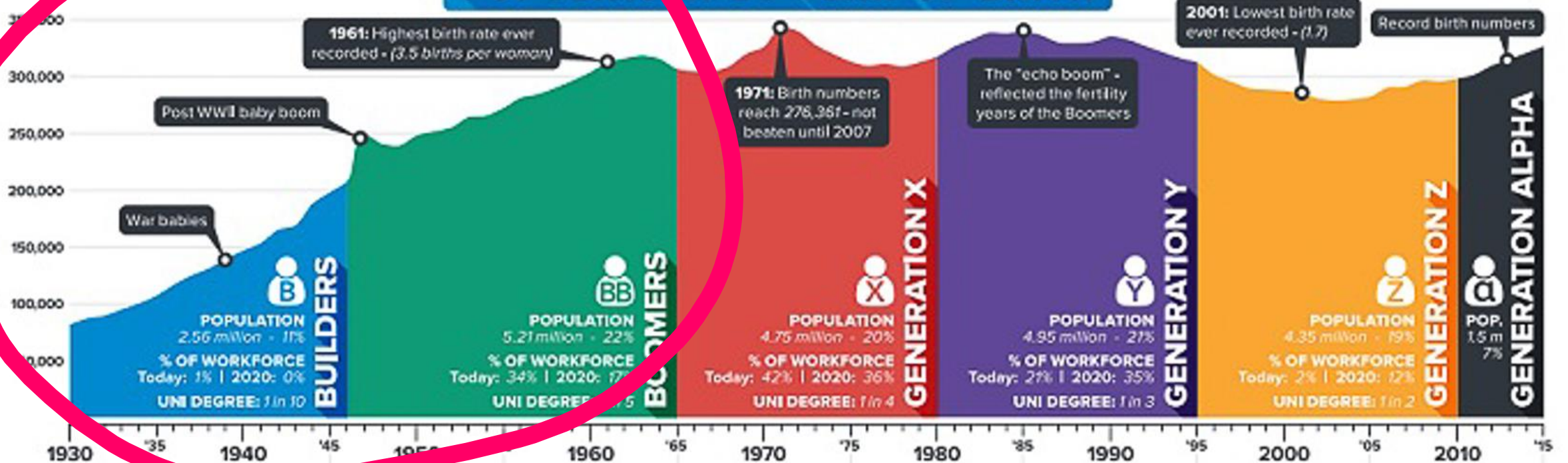
LIFE EXPECTANCY AT BIRTH
1984: Male: 76.8 Female: 79.0
Today: Male: 79.9 Female: 84.3

MEDIAN AGE OF PARENTS (NEW BIRTHS)
1984: Fathers: 30.0 Mothers: 27.1
Today: Fathers: 33.0 Mothers: 30.7

MEDIAN AGE FIRST MARRIAGE
1984: Male: 25.7 Female: 22.9
Today: Male: 29.8 Female: 28.1

FERTILITY RATES (BABIES PER WOMAN)
Australia: 1984: 1.9 Today: 1.9
Current OECD Avg: 1.7 Current world Avg: 2.4

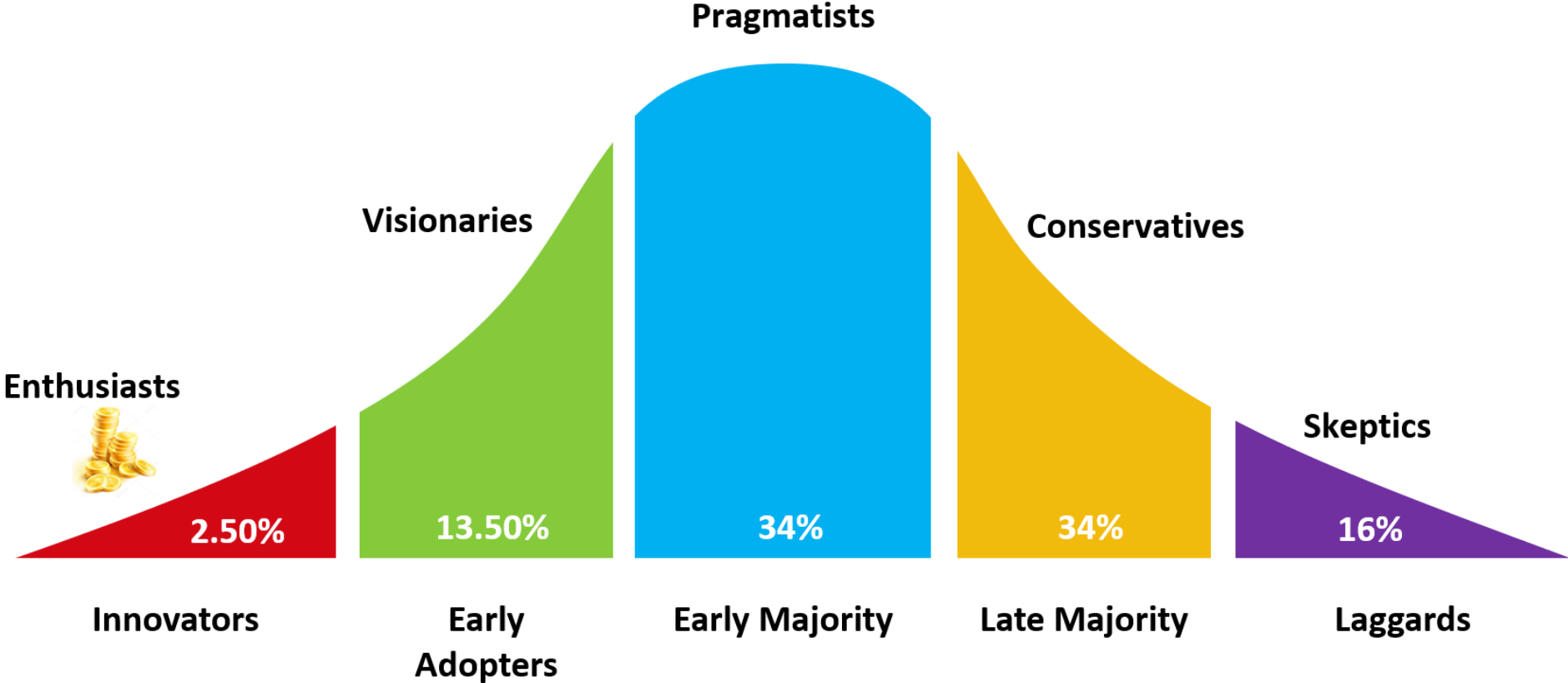
POPULATION BY YEAR OF BIRTH





Protecting Family Wealth with succession, asset protection and bloodline planning

Why being first is so important



Let's get to know all of these

- Changing trusts and SMSF deeds with no resettlement
TD2012/21
- Modern Discretionary Trust with three levels down of Appointors
- Leading Member discretionary trust
- Family Protection Living Trust for bloodline protection
- Leading Member SMSF for bloodline protection
- The Protector – advanced gift loan back strategy with call options
- The Business Protector – transfer and licence back of business assets
- Corporate trustee – successor director solution
- SMSF testamentary trust built outside of the estate
- Insurance Proceeds testamentary trust built outside of the estate

SAPEPAA Certification Course

- Course criteria – follow the competency standards
 - Discussions with PWC Skills Council to place on national skills register
 - Tender put to Deakin, Kaplan, Griffith and Adelaide University
 - Too early at this stage until significant membership
 - Costs \$3,000 - \$10,000 per student
 - The SMSF Training Group to launch course in third week of July
- Certification or Accreditation
 - SAPEPAA Accreditation
 - Multi-choice exam
 - \$250 fee – three attempts



Case Study 1 – Couple with 2 children – No business or SMSF


- Mary Smith - Doctor (Mum) aged 43 earning \$250,000 from Medical Centre and Bill Smith aged 44 - house Dad earning nothing
- 2 children – 16 (John Smith) and 11 (Lucy Smith)
- Family Home worth \$1.2 million owned jointly, home loan of \$550,000
- Industry Super - \$250,000 Mum with \$1 million life cover, \$55,000 Dad with \$1 million life cover



BLOODLINE



Five levels of advice and revenue

- Succession and control
 - Asset protection
 - Superannuation
 - Taxation
 - Estate Planning
- 

Line of Succession - so Important

- Mary Smith is Leading Member and the first in the line of succession
- If something happens to Mary, she is sued – has an accident or dies Bill Smith is the next in line – ideally Mary’s enduring power of attorney – Executor – successor Leading Member for the Family Leading Member Trust and successor Leading Member for the Family Leading Member SMSF
- So who is next in line???
 - John Smith – although 16 he can be Leading Member but under advisement
 - Alternative is to put in place a Guardianship Board with John, Lucy once age 16 and two advisers

Strategy – Leading Member Living Trust – the Asset Protection Equation

- Mary Smith is Leading Member and the first in the line of succession
- Mary is the principal beneficiary of the Trust
- Bill, Lucy and John are included as beneficiaries as are any entities that she is associated with
- Should have corporate trustee with Mary holding all the shares as Leading Member. If Mary resigns, dies or becomes incapacitated then her shares are cancelled and the next in line – Bill gets issued new shares
- If Bill dies then both children can have sub trusts with directions like a testamentary trust but no minor tax benefits with a Living Trust
- Why a Leading Member is better than the Successor solution – although both great

The Protector – for the Family Home

!!Soon with Option Agreement!!

Family Protection Company

Step One
Family Protection Trust
– DNA style



Family Beneficiaries
Lineage or Bloodline

Step Three: Loan with Security
Soon with Option Agreement



Step Two: Settle or Gift

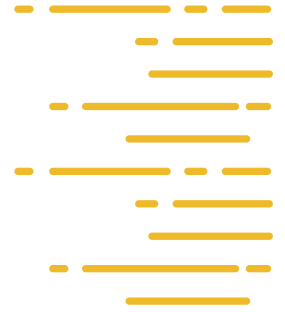
Assets	Net Equity
Home	\$1,200,000
Cars	\$75,000
Shares	\$75,000
Liability	\$550,000
Net Equity	\$800,000

Build a Leading Member SMSF

- Accountants exemption for clients seeking SMSFs – new SMSF letter
- Leading Member can hire and fire trustee and members plus veto any Trustee decisions. Their goal is to ensure retirement income and assets protected for the bloodline.
- Rollover industry funds but keep a balance for insurances. There are companies now that will roll insurance into the new SMSF
- Mary is the Leading Member and Bill is also a member
- The pros and cons of having the children Lucy and John as members of the Fund, particularly for insurances

Children's Cover is eligible for any Australian aged between two and 17. Cover lasts until the policy's anniversary following your child's 21st birthday. As the cover is attached to your own life insurance policy, the insured person must be your own child.

Bringing in the Family Structure for tax planning



ATO TD 2005/29 Example

14. *Mary is a computer consultant who provides her professional services through her private company to a number of clients, all of whom refuse to contract with her personally but insist on obtaining her services through a contract with her company. The company employs Mary to provide programming services to its clients and employs her husband Derek to provide administrative support. Derek obtains a market value salary for his administrative work for the company, but the company provides superannuation contributions on his behalf to a complying superannuation fund up to his age-based limit of \$95,980. The company provides the remainder of its fee income, net of expenses, to Mary as remuneration for her services. Mary's remuneration consists of salary and a superannuation contribution of \$4,500, representing 9% of her salary (the minimum level of superannuation support required under the superannuation guarantee scheme). Mary's salary is lower than it would have been if the company had not made such a high superannuation contribution on behalf of Derek. However, Derek provides valuable service to the company for which he is fairly remunerated, the company makes genuine superannuation contributions on his behalf, and there are no unusual features to the arrangement. In the circumstances Part IVA does not apply.*

Estate Planning

- Smith SMSF
 - SMSF Will with pensions, at the option of the Trustee, to Bill or the children or shared – section 303-5 tax free lump sums to children on back of pension
 - SMSF Will to pay to Bill who sets up SMSF testamentary trust for himself and his children
 - For lump sums to dependants *ALL tax free but income that relates to insurance proceeds is assessable unless from a reversion of an over 60 year old where taxed at 10%*
 - Lump sums to non-dependants taxed at 30% for insurances
- Smith Leading Member Trust
 - Continuity with Bill and children
 - Distributions are taxable
 - Sub trusts for children on Bills demise or earlier



“The SMSF Death Benefits Trust”

- **A testamentary trust that is created by the Trustee of the SMSF on the death of a member**
- If set up right it can access the preferential tax rates for minors so they are treated as adult children
- The capital must go to the beneficiary or their dependants in order for it to access the favourable tx consequences

4.1 Death Benefits from the Fund

I hereby direct that the Trustee of the Fund, provided the Fund has the specific assets or resources to do so, make or transfer the following benefits or assets to the following beneficiaries:

a) SPOUSE – SALLY SMITH

DEATH BENEFIT PAYABLE:

- All of my superannuation interests

This benefit may be paid as an income stream if allowed under the Superannuation Laws or transferred directly to the designated beneficiary or any trust, company, person or other entity that the beneficiary directs, including a transfer to the deceased member’s estate for the asset to be held specifically for the beneficiary or in a trust for that purpose. At the direction of the beneficiary or any Leading Member the Trustee may create a SMSF Death Benefits Trust to hold the designated bequest. The SMSF Death Benefits Trust is a discretionary trust whereby the beneficiary or their assign is to be the Trustee and appointor. Further the beneficiary is to be designated primary beneficiary of the Trust along with any lineage or such other beneficiaries as the beneficiary includes in the constituent SMSF Benefits Trust Deed. The exact terms and conditions of the SMSF Death Benefits Trust are to be determined upon advice of any Professional engaged under this SMSF Will to look after the deceased member’s superannuation estate.

i SALLY SMITH NOT ALIVE

In the event that SALLY SMITH is not alive then their share of the deceased’s superannuation benefits are to be paid to my children Max and Sophia who are to share equally under the same terms and conditions as directed for the original beneficiary, either directly if the Superannuation Laws allow or via the deceased member’s estate.

Traditional Estate Planning

- Will with Testamentary Trust
- Runs counter to asset protection via the Living Trust and the SMSF Will – NO super and no trust monies to go to the Estate
- Will
 - Home goes to Bill as in joint names
 - Residual estate after paying off taxes, debts (to the Living Trust) goes to Bill with the option of a testamentary trust for himself and the children
 - If Bill not alive then automatically put into a testamentary trust for John and Lucy. Separate testamentary trusts are warranted for larger estates
 - Need for a Guardian Board until the youngest reaches age 25



Case Study 3 – Couple, Business Owners, Investment Property, SMSF


- Alice Brown, aged 48 has a marketing consulting firm that runs through the Brown discretionary trust and advises large companies on marketing strategies
- Her spouse for eight years Sam Sila, aged 36 runs a cosmetic surgery via Sila Pty Ltd
- Alice has two children from a former marriage to Steve Brown and a child with Sam. Her children Anne is 24 and John is 21 – the baby Bobby is 10
- They have a home in Surry Hills in Sydney worth \$3M with no debt and three investment properties worth \$2.2M with \$2M debt
- They also have a Brown Super Fund – with Alice’s account at \$550,000 and Sheree’s at \$250,000.



BLOODLINE



Five levels of advice and revenue

- Succession and control
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 - Taxation
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Line of Succession - so Important

- Alice is Leading Member and the first in the line of succession
- If something happens to Alice, she is sued – has an accident or dies
Sam is the next in line – ideally Alice’s enduring power of attorney –
Executor – successor Leading Member for the Family Leading
Member Trust and successor Leading Member for the Family
Leading Member SMSF
- So who is next in line???
 - Anne and John
 - Alternative is to put in place a Guardianship Board with Anne,
John and Bobby and two advisers

Strategy – Leading Member Living Trust – the Asset Protection Equation

- Upgrade the existing discretionary trust deed so Alice is Leading Member and the first in the line of succession
- Alice is the principal beneficiary of the Trust
- Sam, Anne, John and Bobby are included as beneficiaries as are any entities that she is associated with
- Should have corporate trustee with Alice holding all the shares as Leading Member. If Alice resigns, dies or becomes incapacitated then her shares are cancelled and the next in line – Sam gets issued new shares
- If Sam dies then both children can have sub trusts with directions like a testamentary trust but no minor tax benefits with a Living Trust
- Should set up sub-trusts for each beneficiary?

The Protector – for all assets

!!Soon with Option Agreement!!

Family Protection Company

Step One
Family Protection Trust
– DNA style



Family Beneficiaries
Lineage or Bloodline

Step Three: Loan with Security
Soon with Option Agreement

Step Two: Settle or Gift

Assets	Net Equity
Home	\$3,000,000
Cars	\$75,000
Properties	\$2,200,000
Liability	\$2,000,000
Net Equity	\$3,275,000

What to do with Sam's Sila Pty Limited

- Keep separate from Alice's family's asset structures
- Transfer the equity to a new Sila Family Protection Trust
- Use CGT small business concessions
- Or transfer the key assets such as logo's, equipment, databases and processes from the company to the Sila FPT and license or lease back
- Sam is leading member, followed by Alice and then Bobby with maybe the other children or advisers as guardians

Build a Leading Member SMSF

- Accountants exemption for clients seeking SMSFs – new SMSF letter
- Leading Member can hire and fire trustee and members plus veto any Trustee decisions. Their goal is to ensure retirement income and assets protected for the bloodline.
- Rollover industry funds but keep a balance for insurances. There are companies now that will roll insurance into the new SMSF
- Alice is the Leading Member and Sam is also a member
- The pros and cons of having the children as members of the Fund, building into a five member SMSF

Estate Planning

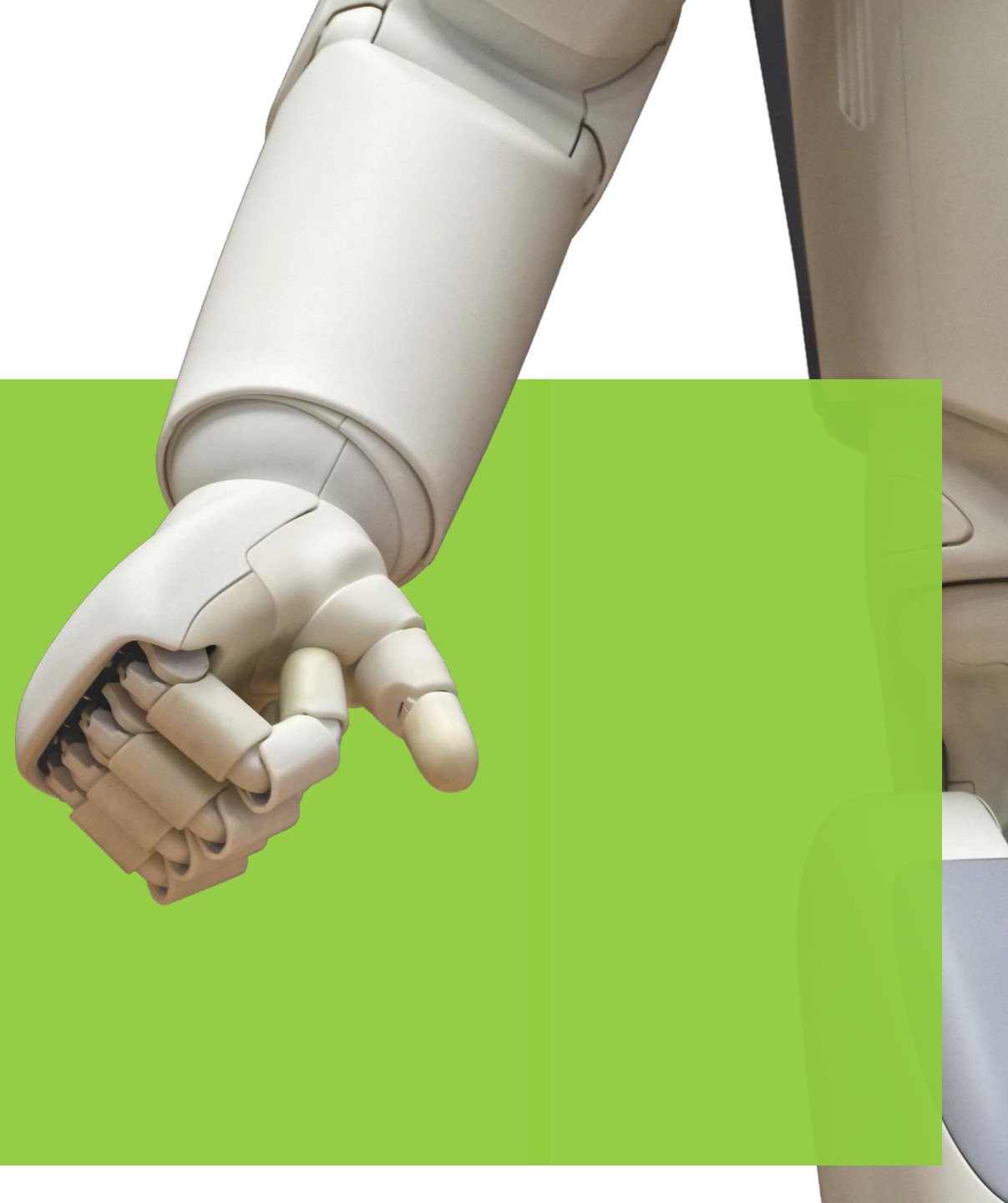
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Business Protection

Protecting businesses and ensuring continuity with the Successor Director solution and the Business Protector

2020 Total number of companies registered in Australia

Month	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
November	48,879	935,761	12,999	502,788	135,843	28,654	909,133	247,500	2,821,557

What happens with these companies, whether single or multi-director, if your client director dies, becomes incapacitated, goes to jail or can't be found?

Alternate or Successor Directors

	Alternate directors generally (subject to differences in company constitutions)	Successor director
Do you need to notify ASIC?	Yes	Yes, it's a fully-fledged director
Power to sign circulating resolution	Yes	Yes
Power to vote at meeting?	Yes, only when appointing director not present	Yes
Counted as part of the total number of directors?	No	Yes
Must be a director to act in the role?	No	Yes
Does the position cease if the appointing person loses capacity or dies?	Yes	No, it is these events that automatically appoints the nominated successor director as a 'real' director

The Successor Director Solution

- The company constitution must include the ability of a director, with the prior agreement of the Board of Directors, to appoint a Successor Director
- Step One: Upgrade the Company Constitution
 - Upgrade is completed under section 136 of the Corporations Act through a shareholders meeting
 - The old constitution disappears and a new replacement implemented
 - Choose the company from trustee companies to trading companies
- Step Two: Directors resolve to appoint a Successor Director for one of the Directors in the event of the death, incapacity, bankruptcy, imprisonment, not available, who is overseas or does not want to act as a Director anymore

So Successor Directors are the top of the tree

- First the company constitution needs to have relevant authority for Successor Directors
- For SMSF trustee companies:

5.1.4 Any Member who is a Director may seek to appoint a Successor Director, as a Replacement Director, who is to take the Directors directorship in the event of the Director's incapacity, bankruptcy, death or by their own choosing provided such an appointment does not breach the Superannuation Laws.

- For ordinary companies:

45.6. Notwithstanding rule 45.5 the Directors, at the request of a Director, may confirm the appointment of a Successor Director who is to take the Directors directorship in the event of the Director's incapacity, bankruptcy, death or by their own choosing.

Successor Director is built into EPOA

- We chose EPOA rather than a separate document as it saves time and also it places the EPOA in as the Successor Director
- A separate EPOA for Successor Director can be achieved by only ticking the Successor Director button

Please enter the **Power of Attorney** details below

Attorney is authorised to...

- Act on behalf of the principal for the superannuation fund or superannuation funds including acting as a Replacement Trustee or Replacement Director while this enduring power of attorney is valid and the principal have consented to them acting as such
- Do anything on behalf of the principal that can lawfully be done by an attorney (including both personal and financial matters)
- Act as a Successor Director where the Principal is a director and no longer able or willing to act as a director through incapacity, death or their own choosing

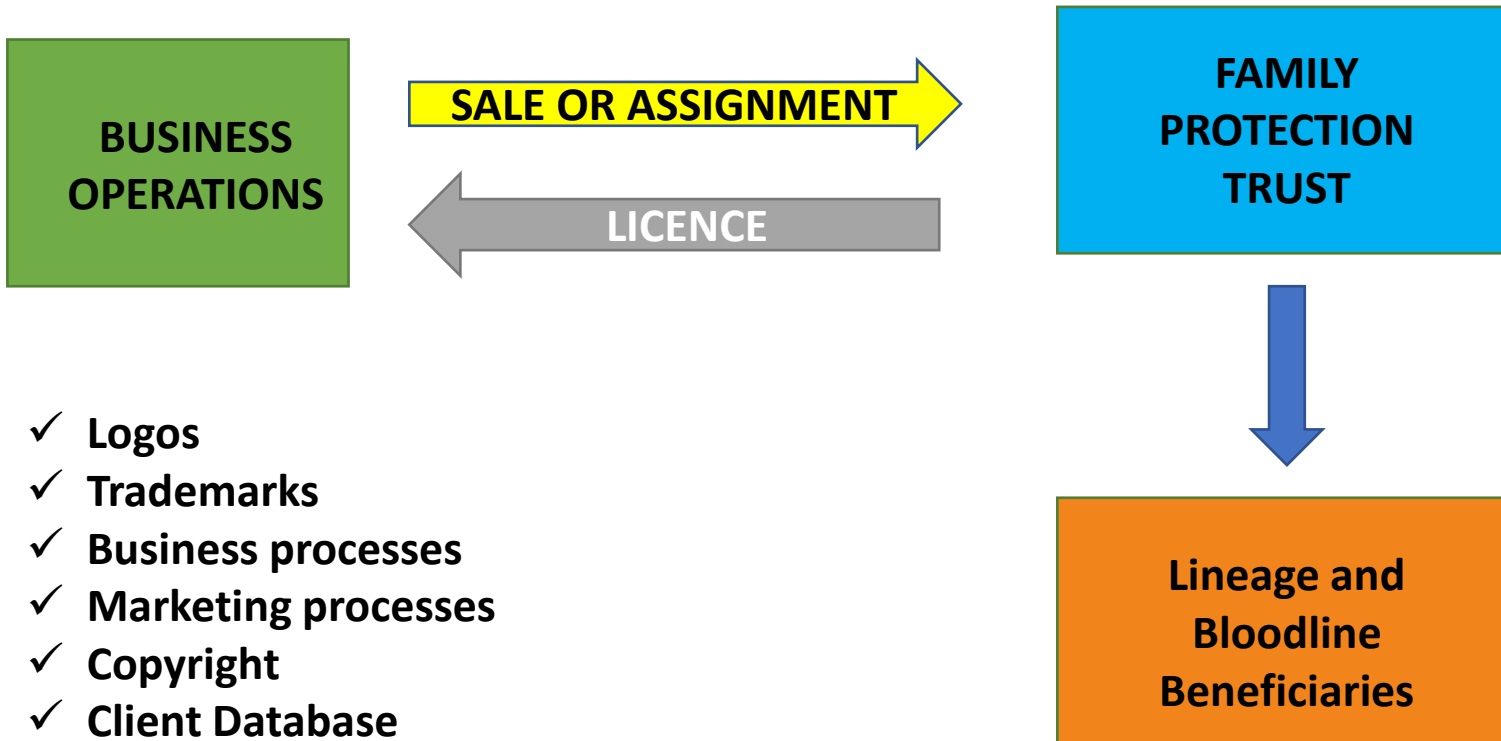
Client use of The Protector

- For any professional – don't trust PI and remember the SMSF auditor case - Cam & Bear Pty Ltd v McGoldrick [2016] NSWSC 1894
- For anyone in superannuation – sections 52, 52A, 52B, sections 54B and 54C plus section 55(3) could wipe you out – no matter how big you are
- Builders and sub-contractors work in risky environments and property developers – well they are problematic
- Directors, free lance workers, IT (disasters), doctors, nurses, dentists
- Small and medium business owners
- Property and car owners – a must according to Tim Munro of Change GPS

Client use of The Protector

- Family provisions claims by eligible persons which include children, grandchildren and in some cases ex-spouses can make a claim – even from 25 years ago
- Need to protect estate assets by not having any
- Have them transferred by The Protector into a trust that provides asset protection in life and death, and with a veil of protection under Family Law
- The Trust should also limit any distribution or control to lineage (direct descendants) and bloodline (any DNA) in its rules and set up at the same time
- Can convert an existing trust but watch its dealings – better to be clean
- *Review of the Change GPS Client Engagement Letter*

De-risking a client's business with the Business Protector



Why business assets are at risk

- Business assets sitting with sole traders, partnerships, trading companies and trusts are vulnerable
- Vulnerability comes from business litigation, divorce and death – family provisions claims
- Your clients know that and with Australian having the highest number of lawyers per capita it is a huge business issue

The Solution – The Business Protector

- Every business holds key assets including databases, business processes, trade marks, logos and other property which may be put at risk from litigation of any form
- The Business Protector enables these assets to be transferred from a business entity to a separate company or trust for protection
- The assets can then be licensed for use back to the trading entity

Watch outs – The Business Protector

- If you transfer for nil consideration then opens up for CGT market value consideration between related parties
- If you transfer for less than market value consideration then the four year bankruptcy claw back applies but if for market value consideration then only voided if the intent was to defeat creditors
- Transfer can be by way of loan agreement which is paid down by way of licence fees