



The Protector 2.0

When and why it works plus plenty of Q & A and customer pricing

27 May 2021

Invest in yourself and your Business



**SUCCESSION, ASSET PROTECTION
AND ESTATE PLANNING ADVISER
ACCREDITATION**

19-21 July 2021



SAPEPAA



**AUSTRALIAN
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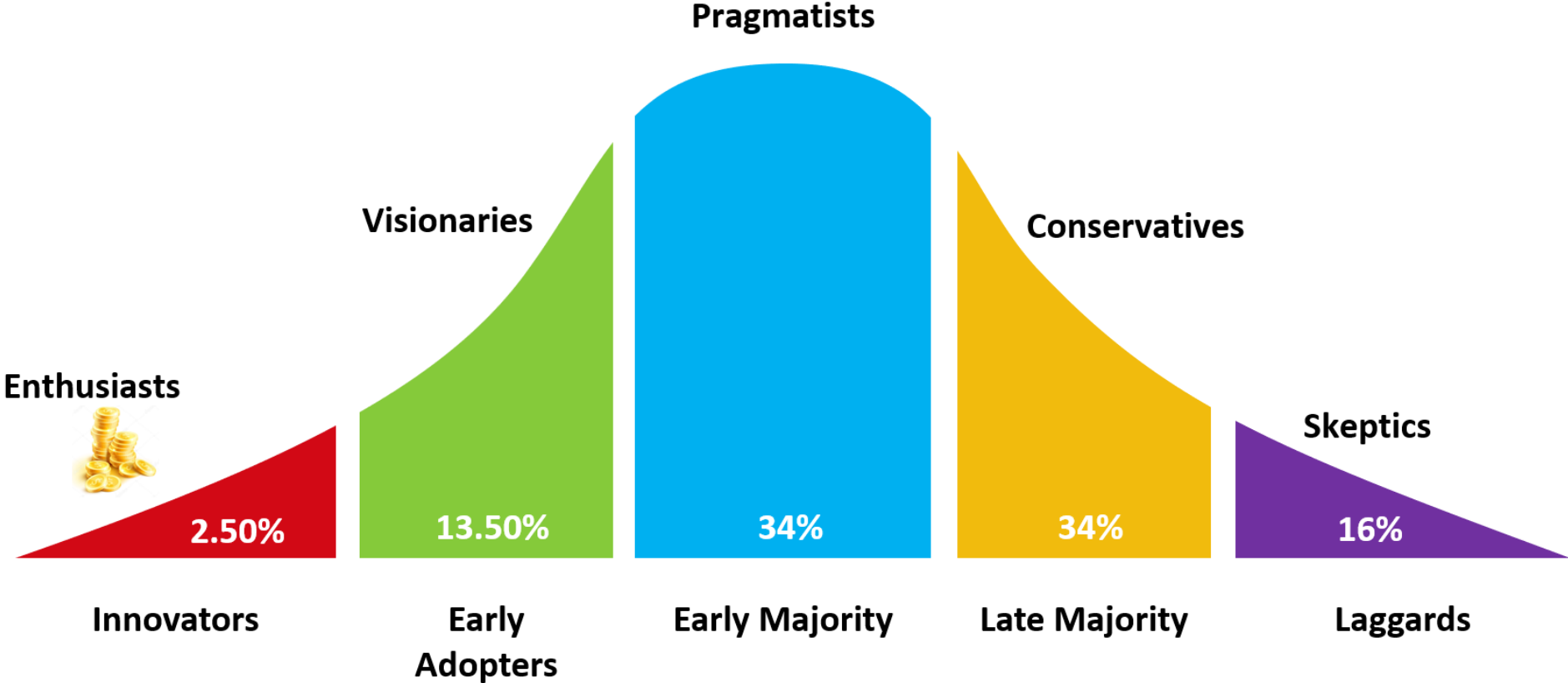
02 June 2021
12:30pm AEST

**TIME-CRITICAL
WEBINAR RELEASE:**
Prepayment of Super Contributions - a Year
End Tax Gift

Don't let this strategy slip through the cracks before 30 June 2021.

Join Grant Abbott live to reveal how to maximise your super and reduce tax with no penalties. The contributions prepayment strategy can be used by employees with large salaries, sales people with bonuses, beneficiaries of a family trust, any person with a capital gain from the sale of shares, a business or an investment property and anyone up to the age of 75 with taxable income, a super fund and a desire to pay less tax in 2021.

Where are you in the scheme of SAPEP?



The Succession, Asset Protection and Estate Planning space covers a wide range of structures and strategies all with the goal of providing protection and if you like a Moat around a client's affairs.

Make no mistake there is a multitude of lawyers seeking to Robin Hood your clients to distribute their wealth amongst a list of aggrieved parties. With in excess of \$3 trillion to pass hands over the next fifteen years expect litigation upon litigation. Do we care?

Absolutely! They can Robin Hood all they want but my client's Moats are filled with skanky water, crocodiles and piranhas.



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

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

What are the Problems ALL – repeat ALL of our client's face? And we are not out of the woods!

- **Litigation** – Fair Work, ATO debts, ASIC licensing, local government, customers and partners – is there any end?
- **Bankruptcy** – All starts with a creditor's petition and then rolls on from there. What is included and what is excluded
- **Family Law** – The difference between Matrimonial Property and financial resources – it is all about control
- **Challenging an Estate** – family provisions claims are going crazy as Supreme Courts open up “eligible persons” and legal fees explode



A MOAT FOR YOU AND YOUR CLIENT

The Protector

Succession of FPA

- Tommy
- Anna
- Will



Bloodline Beneficiaries



"Honestly, boss, I'm at home in bed sick. That noise? Um, I'm watching a show about Porsches."



Asset	Net Value
Home	\$1,000,000
Watch	\$50,000
Porsche	\$250,000
Shares	\$300,000
Total	\$1,600,000

Bankruptcy – Do not wait as time is of the essence

- **Exempt Assets:** Section 116 deals with superannuation both before and after retirement – excluding pensions. For SMSFs need to shift to a retail or industry super fund
- **Void Transactions:** Subject to clawback:
 - For undervalued transactions – section 120 – five years/four years if a related party and transferor was solvent and two years for unrelated
 - If the transfer was done to avoid trustee in bankruptcy where the transferor was about to become insolvent – section 121
- **Valuations:** It is important to get valuations to show that a transaction is valued both at the gift and loan level

The Protector 2.0 Process

- **Establish Leading Member Trust:** set up Leading Member Discretionary Trustee company first and Focus on Succession of Leading Member Appointors
- **Accountants Solvency Certificate**
- **Deed of Cash Gift** from client to Trust
- **Cash = Promissory Note** issued from client to Trust
- **Loan of Cash back** to Client by transferring back the Promissory Note
- **Mortgage Deed and Personal Guarantee**
- **Registration (not caveat) of mortgage and PPSR for assets**
- **Trustee call option** on assets for market value consideration

Family Law – it is all about “Control”

- **Kennon v Spry [2008] HCA 56** – interesting case with multiple judgements and investigation of numerous discretionary trust updates and upgrades over a period of 30 years. All came back to control which Dr Spry never gave up. High Court looked through amendments.
- **Control is the Key** – appointor/trustee
 - **Harris v Harris [2011] FamCAFC 245** – held Mother controlled the Trust
 - **Morton v Morton [2012] FamCA 30** – brothers controlled the Trust
 - Even more effective post death for next generation:
 - **MacDowell v William [2012] FamCA 479** cannot review Mother’s Trust
 - **Balken & Vyner [2020] FamCA 955** husband did not control deceased father’s Family Trust

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Family Provisions are Deadly

- 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](#).

Case Study

- **Smith Family:** John is on second marriage, which his children don't like and his eldest has threatened to challenge any Will.
- **Smith Business:** Run through Smith Enterprises Pty Ltd and doing well with great cash flow but it is in hospitality
- **Assets:** John is currently buying a house in his own name to ensure CGT exemption. He will own completely and has a \$1M investment property portfolio with \$300,000 loan
- **Super:** John has \$550,000 in Australian Super and is age 55
- **Valuations:** Recently had all assets valued for bank loan purposes



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