The Protector - *Asset Protection for Protection and Estate Planning*

With Grant Abbott I Love SMSF – Michael Jeffriess – LightYear Group – Tim Munro Change Accountants – Tony Anamourlis Abbott & Mourly

4 June 2020

"In 2009 I did a Capital Protection Strategy through lawyer Shane Ellis on the Gold Coast and it was one of the best things I ever did. I did not understand it all at the time – well sort of but did not immerse myself in the detail. It was just smart and simple.

Then Tim Munro asked if we had the strategy on the LightYear Docs site and I looked at the components and they were all there. Now it could be pieced together from the seven documents on the LYD platform but that is not what we do at LightYear – we automate strategies. So we now have an all encompassing, comprehensive Protector which brings everything into one place. And every day we learn more and more, add here and there to make it "safe – certain and secure."

A MOAT FOR YOU AND YOUR CLIENT

What it looks like

Family Protection Company

Step One
Family Protection Trust – DNA style

Step Three: Loan with Security

Step Two: Settle or Gift

Family Beneficiaries
Lineage or Bloodline

Assets	Net Equity
Home	$1,100,000
Car	$200,000
Investments	$400,000
Net Equity	$1,700,000

The perfect client 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
- UPE's – Michael will look at later

Legal Side of The Protector

- Two cases looking at the legal side - Pelly & Nolan [2011] FMCAfam 530 and Atia v Nusbaum [2011] QSC 044 – but both were effective between family members until there was a fight so must do with a Family Protection Trust
- *It is a proactive measure and unlikely that it can defeat creditors if you are knocking on the door of banruptcy but with new Coronavirus bankruptcy rules – who knows*
- We will be putting together an Insolvency Barristers opinion on the bankruptcy issue
- Great for Family Provisions claims and keeping assets away from new spouses and children – if you want!

A Practitioner’s point of view – an interview with Tim Munro

- Who do you look for in a target client?
- Can you go through your process from start to finish:
  - Initial discussion – key points
  - Engagement letter
  - Proposed Fee
  - Client pushback or fee acceptance
  - Delivery time frame
  - Budgeted Protectors for 2020-2021

Asset, Risk & Protection with Michael Jeffriess

Is it possible to secure UPE’s & Director Loans?

- YES!
- Important tools
  - Documentation
  - PPSR – registering the security
- Important matters
  - Timing

Asset, Risk & Protection

Eventum Optimum Pty Ltd

THE BEST RESULT

B2B

CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

CPA AUSTRALIA

FINANCIAL PLANNER OR BROKER

- Secure director / shareholder loans, UPE's
- Creditor + Predator negotiations
- Protect assets + Derisk
- Restructure
- Liquidator appointment & negotiation
- Funding & Finance Solutions – Debt & Equity
- Management Consulting

Work for your clients not against your clients

- Maintain client relationship
- Provide services where requires as part of EO engagement:
    - Structures
    - Valuations
    - Finance

Asset, Risk & Protection

Contact Details

Eventum Optimum Pty Ltd

THE BEST RESULT

Website

www.eventumoptimum.com.au

Email

michael@eventumoptimum.com.au

Linkedin

@mjeffriess

Linkedin

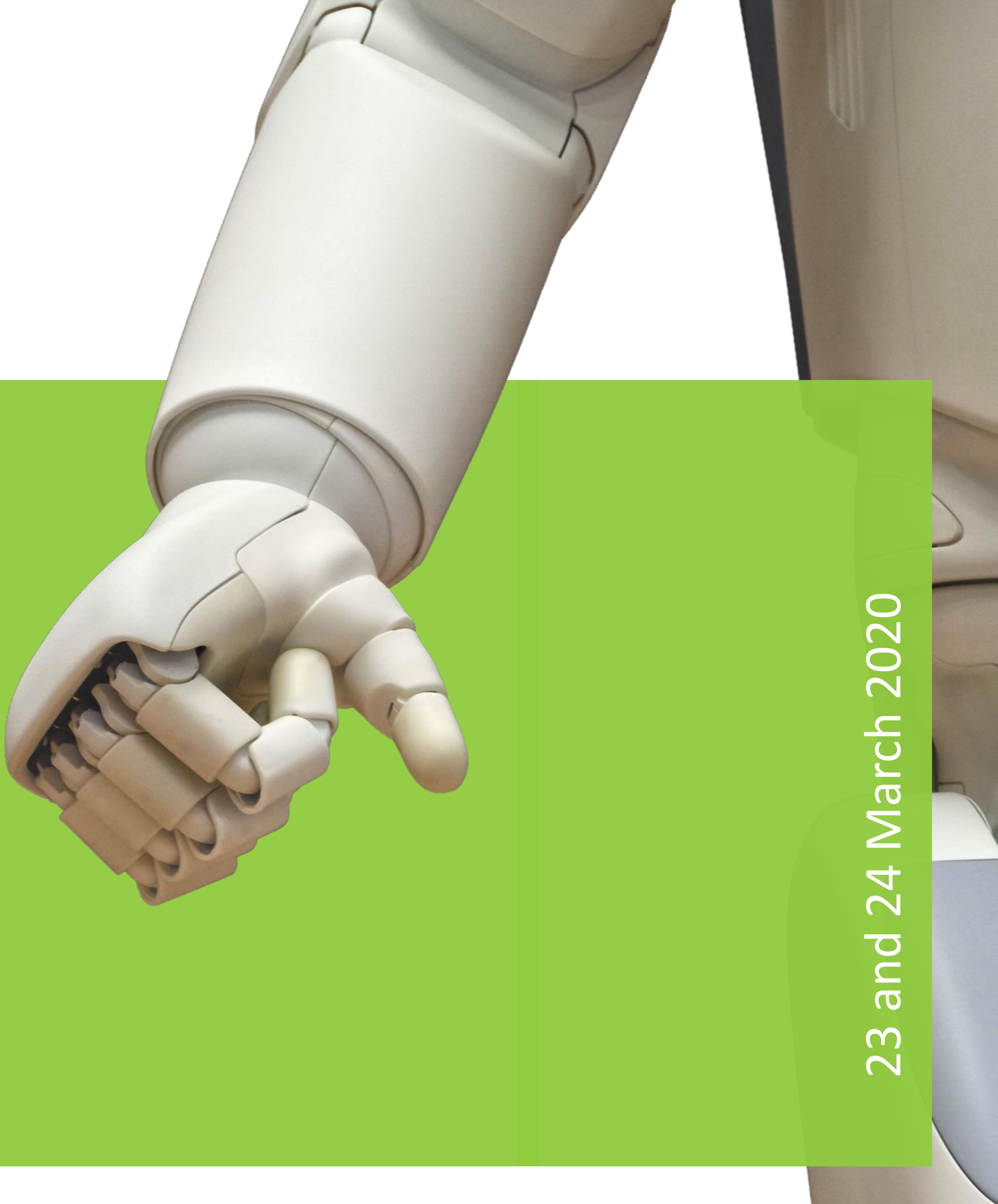
@eventumoptimum
@mickajeffriess

@eventumoptimum

LightYear DOCS

I ❤ SMSF

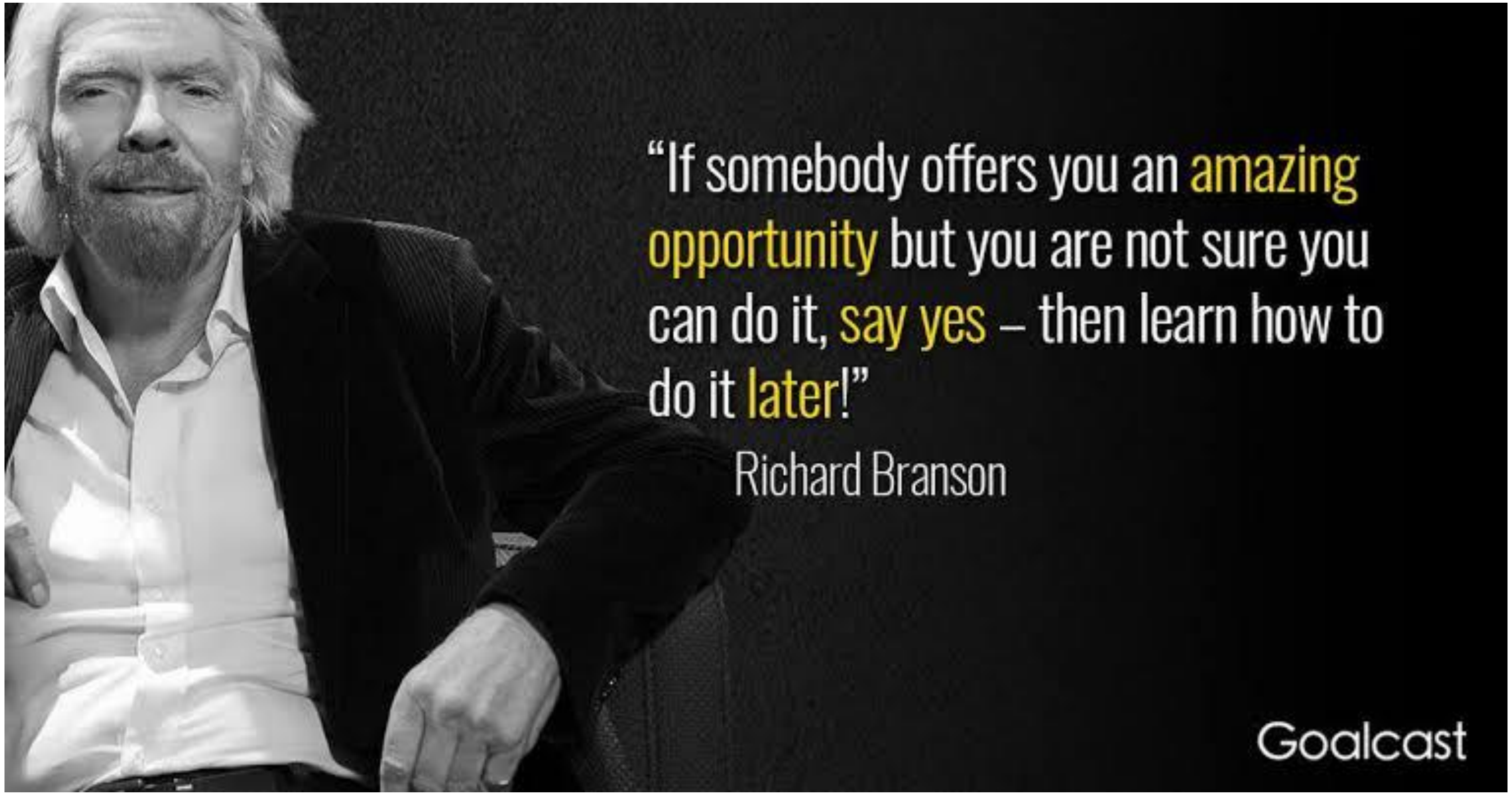
Abbott & Mourly



Estate Planning

SMSFs and SMSF Death Benefit Trusts and Family Provisions claims

23 and 24 March 2020


"If somebody offers you an amazing opportunity but you are not sure you can do it, say yes – then learn how to do it later!"
Richard Branson
Goalcast

And more importantly what is coming down the track

Projected superannuation assets

Year	Consensus private sector forecast ($billion)	Treasury 2008 asset forecasts ($billion)
2020	2,900 - 3,100	2,815
2025	3,500 - 4,500	3,830
2030	5,000 - 6,500	5,075
2035	6,100 - 8,500	6,650
2040	9,000 - 10,500	8,645

Source: Assorted forecasts, Treasury RIM Group and Cooper Review.

- SMSFs by 2030: **$1,370 Bn**
- And for 2040: **$2,335 Bn**

Do we realise how lucky we are … and the RBA is prepping for a recession

Type of fund	Total assets ($billion)	No. of funds	No. of accts (June 18)
Corporate	57	20	0.3 million
Industry	678	37	11.6 million
Public sector	620	37	3.5 million
Retail	623	115	11.4 million
Funds with less than 5 members	749	600,206	1.1 million
Balance of statutory funds	56		
Total	**2,783**		**28.0 million**

Source: APRA Statistics – March quarter 2019 and APRA annual statistics for no. of accounts

- Average member balance industry super: **$58,450**
- And for SMSFs: **$680,910**

Enduring Powers of Attorney

- Must be completed in line with the laws of the State that the person resides
- Can be all encompassing including the ability to handle finances, transact and do things on behalf of the Principal
- Can include health and ensuring the Principal is looked after
- Crucial to have identification of the Principal for any contract or transaction to prove Principal is alive and has signed identification
- Can come into play on incapacity for health and for finances straight away or at a time desired

Enduring Powers of Attorney for SISA

- It is a completely different game than ordinary EPOAs and can be completed solely for SMSF Trusteeship
- Must ensure that the EPOA is capable of running the Fund
- Section 17A(3)(b)(ii) of SISA 93 provides an out to the member/trustee or member/director of corporate trustee rule
- Enables an EPOA to take over from a current Trustee or Director of a Corporate Trustee
- They act as Trustee and are bound by the provisions of the SISA and Corporations Act 2001 for directors – they are not acting as an agent as was originally argued by most lawyers
- The Commissioner of Taxation issued a ruling SMSFR 2010/2 to clarify

Case Study

- John Smith – aged 57 and still working as a doctor with $1.4M in super and wife Sally aged 48 with $600,000 in Smith SMSF. The fund is invested in shares ($400k), medical rooms ($1.2M) which are leased to a medical practice and $400k in cash
- Son Mathew is aged 33 and a manager with a second tier accounting firm who has been married to Beth for ten years and has two children – Ben and William both under age 10
- Daughter Marie aged 28 lives in Adelaide, a doctor and is single
- John has two investment properties in Dubbo and Singleton plus the family home at Drummoyne which is in joint names
- He also has an investment in a medical practice which is a private company and he would love to see Mathew run one day
- Mathew has $140,000 in super with AMP and Beth has $60,000 in BT super

What John wants

- On a scale of importance in his life right now, family and looking after the family is 9 out of ten
- If something happened to him he would like:
  - His super to go to Sally as an income stream and then to be shared between Mathew and Marie and any of his lineage at the time
  - Mathew and Marie to get $200,000 from super
  - Each of his children to get an investment property
  - Sally to remain in the house for life and then to go to the children
  - The shares in the medical practice to go to Marie and Mathew via a Testamentary Trust that is for his bloodline only

Income Streams and Pensions

Before account based pensions there were annuities with the first ever recorded in Egypt in 2500BC where a lump sum gives way to an income stream. In England they have been around for centuries, so we are not reinventing the wheel here.

Here's the deal, an annuity is generally offered by a life insurance company for a term certain, life, reversionary or with a residual capital value – and even jointly or severally. A pension is an income stream that is an annuity but simply comes from a pension plan (ex Australia) or a superannuation fund in Australia. They can be offered all over the world as only the country that you reside in can tax you.

Pension and Income Stream Strategies

- An income stream, whether a pension or a transition to retirement income stream, are financial products and thus licensed products and all that goes with that
- They can have a finite term such as five, ten, fifteen years, life or carry on to one or more reversionaries
- A reversionary is simply a person nominated to carry on the pension or income stream at the time of the death of the member – see SIS Reg 6.21 and the limitation in sub-regulation (2A)
- There can be first, second, third, fourth reversionary beneficiaries and so on
- One of the most complex I have worked on was four pages of terms and conditions – *This Is A Contract Between The Fund And The Member*

Fixed TRIS

- A transition to retirement income stream is not a pension and is not found in SIS Reg 1.06 but in the definitions of SIS Reg 6.01(2) – do you remember it's forerunner – the non-commutable allocated pension – I like this one a lot!
- So it is an income stream that is created from a member's accumulation account and depending on the documentation, grows into an ABP, carries on or ceases by "folding back" into the accumulation account (the only commutation allowed)
- Can run with estate planning and should if it turns to ABP - but if short term TRIS only, then it doesn't need to
- Watch TBAR and trigger as soon as possible

SMSF Estate Planning Pensions

- Let's start with the end in mind and the **reversionary beneficiary**
- Ask these questions:
  1. *Who is going to be the reversionary beneficiary?*
  2. *Who is going to be the reversionary beneficiary if they are not alive at the time of the pension member's death?*
  3. *Will there be a second or third reversionary and will the intermediate reversionary beneficiaries take income only with any commutation prohibited in order to stretch the pension as long as possible?*
  4. *Would the pension member like a clause where any bloodline dependant at the time of the member's death shares jointly in the on-going reversionary pension?*
  5. *What happens if there is no-one left? Will the commutation lump sum go to the estate or should it go into a fixed trust for the benefit of the pension member's lineage only?*

SMSF Dependants: The Family Allowance

- The Family Allowance enables John and Sally to look after Mathew and his children plus daughter Marie 8 aged 3who is in a single sex relationship living in Sydney
- Meaning of Dependancy - ATO Private Binding Ruling -

  Number: 1051231612657
- Set up a Family Allowance contract
- Couple up with a Dependancy Declaration to show dependancy of each member of the Family
- What are all the benefits of meeting the definition of dependency under the SISA 93 and ITAA 97

Binding Death Benefit Directions and Nominations

Please enter the **Nomination** and **Direction** details

Does the member want to revoke earlier nominations?

◉ **Yes** ○ **No**

Does the member want reversionary pensions to take precedence?

◉ **Yes** ○ **No**

Does the member want to appoint the executor as the replacement trustee or replacement director?

◉ **Yes** ○ **No**

Does the member want death benefit payments including pensions and lump sum?

◉ **Yes** ○ **No**

Does the member want a Professional to look after the estate upon the members death?

◉ **Yes** ○ **No**

Do you want a catch all - escape clause in case the superannuation benefits are not payable because of non-compliance of the Fund?

◉ **Yes** ○ **No**

The SMSF Death Benefits Trust

- We need to put a Moat around a clients SMSF so we can use SISA 93 to protect estate planning
- If we use a Testamentary Trust then it goes to the Estate and can be challenged but it does have the advantage of ordinary taxation for minors such as grandchildren
- Or we can create a SMSF Discretionary Trust that flows from a BDBDN or a Reversionary Pension
- Can be a Leading Member or the Dependant can be the Trustee/Appointor and Primary Beneficiary
- Clients need to be informed of both and determine what is most important for them

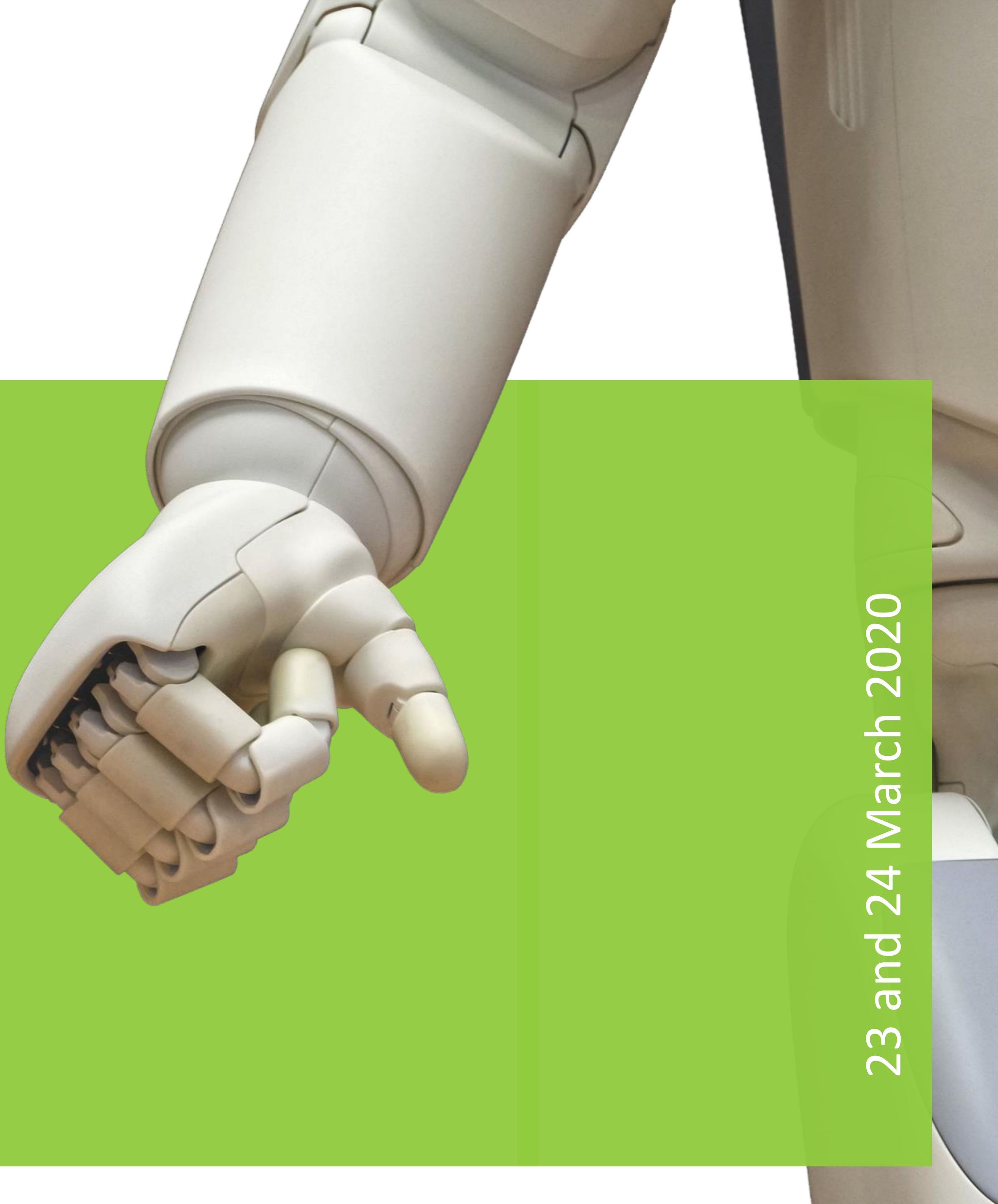
LightYear DOCS

I ❤ SMSF

AM
Abbott & Mourly

Estate Planning

Wills and Testamentary Trusts – Traditional Estate Planning



23 and 24 March 2020

If we have been successful in our Asset Protection and SMSF estate planning, barring the notional estate in NSW (and there is doubt there), there should not be much left in a client's estate with the exception of jewellery and some personal items that it is unlikely a family provisions litigator is going to fight for.

But we are about protection and building a MOAT so we need to assume that there is no Protector and that a basic Will – if there ever is such a document or a more complex Will with optional or mandatory testamentary trusts is the key to success. Will they stand up to a family provisions claim – we can only be determined and set a high bar for litigation!

Case Study Revisited

- **EPOA:** Establish a new EPOA for John to replace the current EPOA with his attorney being eldest son Max and in the event that Max is not alive or incapacitated - Sally and Sarah with Sally having the binding vote in the event of a tied vote. The EPOA would be for health, finances and also note specifically that it is for superannuation replacement trustee purposes. At the same time, Sally's EPOA would have John as the attorney with Max as the successor attorney in the event that John dies or is incapacitated. Both EPOA's would commence once the EPOA is executed not incapacity as lawyers normally draft.

- **Discretionary Trust:** Add Max as the successor appointor to the Discretionary Trust in the event that something happens to John. If Max is not alive or is incapacitated then Sally and Sarah become the second successor appointors. Put Max in as director of the corporate trustee of the discretionary trust and retire Sally. Note: The discretionary trust does not form part of John's estate and with our newly built succession planning for the trust we have created a moat around this structure. ***Safety – Certainty - Security***

The SMSF Death Benefits Trust

- **Leading Member SMSF**: Set up a Leading Member SMSF corporate trustee with only John as director (he is holding Sally's EPOA so she does not need to be a director even though a member) plus bring in Max as a member and director. Change the SMSF trustee and upgrade the SMSF to a Leading Member SMSF with John as the Leading Member, followed by Max on John's death, incapacity or retirement followed then Sally and Sarah. Leading members have the power to appoint and remove members, hire and fire trustees and hold veto power on trustee decisions.

- **Reversionary Pension:** Retire John immediately by resigning from one of his locum positions. This is deemed retirement under SISA even though he remains working. John to set up a reversionary pension that goes to Sally on this death and then on her death or if she is not alive when John dies, is payable to the three children equally but as a lump sum commutation into a SMSF Death Benefits Trust where John is the appointor followed by Sarah. John and Sarah would be directors of the corporate trustee of the Trust which is created by the Trustee of the SMSF not the Executor of the estate and is thus not open to challenge. A similar course of action would be put in place for Sally. ***Safety – Certainty - Security***

The SMSF Death Benefits Trust

- **Super Contributions**: John and Sally would keep on contributing into super with John and Sally taking pension payments. The exact amount to be salary sacrificed from the discretionary trust for John and Sally to be most tax efficient would need to be calculated. Any pension amount over the minimum pension would be treated as a commutation payment and have a corresponding debit to John's TBAR.

- **SMSF Will:** A SMSF Will to be created for John for his building accumulation account with super benefits to go to his children equally and in the case of Jody into a SMSF Death Benefits Trust with John as appointor and trustee to provide some Family Law protection and not limited to solely Jody as beneficiary but all of John's lineage. ***Safety – Certainty - Security***

The SMSF Death Benefits Trust

- **Will with in-built Testamentary Trust**: Create a new Will and TT but this is where things get funny. I have done such a good job securing the discretionary trust and the SMSF from legal challenge and with the family home in joint names what assets will be left in John's legal estate now that SMSFs are being dealt with by the SMSF trustee not the Executor. No matter, there may be proceeds from the family home if Sally passes away. So have John as the Executor of the estate, with Sally and Sarah as successor executors. Any estate assets, which we are limiting as this is where any challenge will lie, are to go to Sally in a Testamentary Trust with Max the appointor and trustee. Unlike the SMSF and discretionary trust moats I can't guarantee that any estate assets will not be challenged but I have done the right thing by keeping as much as I can from the estate which fits in with our asset protection strategies for a doctor (which most estate planning lawyers do not understand).

Wills and TTs

- Executor is the most important and should be Leading Member successor and Successor Appointor
- Specific bequests can be converted into Testamentary Trust by the Executor or the Beneficiary
- Life Tenant Trust
- Main Beneficiary and Residual Beneficiary
- Testamentary Trust can cover all benefits and can transfer to a SMSF

The Final Slide

- Work out where you are in terms of LightYear Docs and also on-going CPD with I Love SMSF and contact me directly
- All strategies are available on the LYD Support and Strategy Centre
- Continue to come to use with new ideas, new documents and new sharing outside of just SMSFs and Trusts

LightYear DOCS

Email:
support@lightyeardocs.com.au

Skype:
smsfbuddha

Facebook:
@ILoveSMSF @LightYearDocs

Linkedin:
@GrantAbbott

Web:
Lightyeardocs.com.au