



The Successor Director Solution – a Must for All Directors

Seminar with Grant Abbott and Tony Anamourlis from Abbott & Mourly lawyers

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This is a question that Tim Munro from Change GPS asked me and made me ponder. What would happen to a business where the founder and prime business mover gets COVID-19 is sick, goes to hospital and stuck there for months?



And then what happens if they die and probate take months or they don't have a will? Who has the authority to run the business, deal with contracts, contacts and bank accounts? Is it a problem?

2,065,523

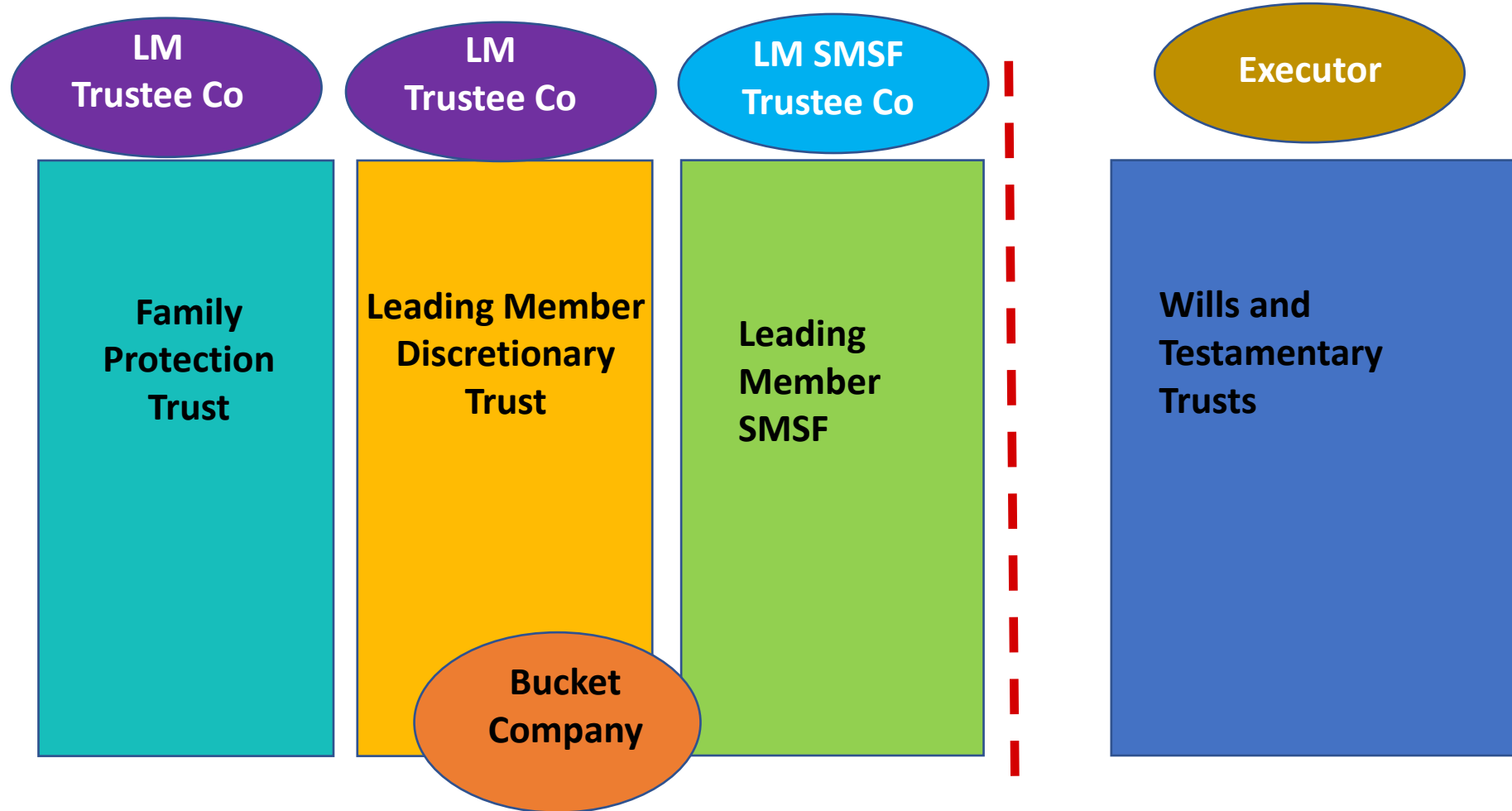
Using the employment measure of small business, there were **2,065,523** small businesses in Australia employing less than 19 people, accounting for 97 per cent of all Australian businesses by employee size. There were 51,000 medium sized businesses, employing 20 to 199 employees, which is 2.4 per cent of all firms.





This is what it is all about

The New Moat Structures



Where will death, incapacity, bankruptcy, family provisions claims or divorce impact a client

- Any trading companies – which will cause business continuation problems
- Any bucket companies – which will cause wealth, loan and most importantly cash flow issues
- Discretionary trustee companies – investment and business continuation
- SMSF trustee companies – fund concerns – will it grind to a halt
- Trustee of unit trusts and companies – representation and maintaining investment concerns

Section 201F of the Corporations Act 2001

Special rules for the appointment of directors for single director/single shareholder proprietary companies

(1) The director of a proprietary company who is its only director and only shareholder may appoint another director by recording the appointment and signing the record.

Appointment of new director on death, mental incapacity or bankruptcy

(2) If a person who is the only director and the only shareholder of a proprietary company:
(a) dies; or
(b) cannot manage the company because of the person's mental incapacity;
and a personal representative or trustee is appointed to administer the person's estate or property, the personal representative or trustee may appoint a person as the director of the company.

Big Bankruptcy Issues

Special rules for the appointment of directors for single director/single shareholder proprietary companies

Section 201F(3) If:

(a) the office of the director of a proprietary company is vacated under subsection 206B(3) or (4) because of the bankruptcy of the director; and

(b) the person is the only director and the only shareholder of the company; and

(c) a trustee in bankruptcy is appointed to the person's property;

the trustee may appoint a person as the director of the company.

There are three LightYear Docs solutions

- With our EPOAs we have a Successor Director solution BUT you must ensure that your current companies have our constitution
- With our Leading Member trustee companies – for SMSF, Leading Member and Family Protection Trusts the solution is a cessation of directorship if the leading member or family protection appointor resigns, becomes bankrupt, gets divorced, is incapacitated or dies. Plus the shares are cancelled and transferred to the next leading member and family protection appointor
- Now we have our stand alone automation – the Successor Director Solution which includes binding resolutions and also an upgrade of the company

Why a Successor Director and not an Alternate Director?



	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



So Successor Directors are the top of the tree

- First the company constitution needs to have relevant authority for Successor Directors
- For SMSF and discretionary 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 in EPOA

- 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

Now the Successor Director Solution

- Contains the ASIC Information Guide No 73
- Not just for sole directors and sole shareholders
- Provides a binding director's resolution to be signed to appoint a Successor Director in the event of incapacity, death, divorce and potentially bankruptcy (choose Leading Member)
- Can do multiple companies at a time
- If the current constitution does not enable the Successor Director then you can upgrade to the relevant company constitution
- Our standard companies now have a Successor Director solution
- Suggested adviser fee is \$750 - \$2,500 per company – depending on the company



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