

A man in a suit and glasses is smiling and showing a document to an elderly couple. The couple, consisting of a man with white hair and a beard and a woman with short brown hair, are looking at the document with interest. They are sitting at a wooden table in a room with a large white bookshelf in the background.

# STRATEGY ROUNDTABLE

## LET'S LOOK AT WILLS AND THE MOAT

**Commencing at 11am AEST – 23 June 2020**

Following the webinar, a short survey will be sent to confirm your CPD.

Please use the chat facility throughout the webinar or contact  
[support@ilovesmsf.com](mailto:support@ilovesmsf.com) for support.

# Procedure for the Strategy Roundtable

- Keep your microphone on mute and only open the mike when you have something important to say or want to ask a question
- The session is recorded so if you don't want a question to appear live on air send me a support ticket after
- Look and learn is the aim of the session. It is not about dollars and cents but building an overall client structure or for the most part restructure
- So stay in your helicopter not down in the weeds



*The Strategy Roundtable is an opportunity for us to pull apart a client specific issue and rebuild it with the goal of protecting a family's wealth and ensuring our structure build is: safe – secure – compliant*

*Family protection requires a focus on defence not offence. With investments you can go on the offence or defence but protection is looking for litigation and regulatory attacks and building a Moat to protect the family's crown jewels and their Castle.*

*It is important, if not vital to lay down the law to the client and make them aware of the potential land mines in front of them.*

Grant Abbott | CEO, I Love SMSF

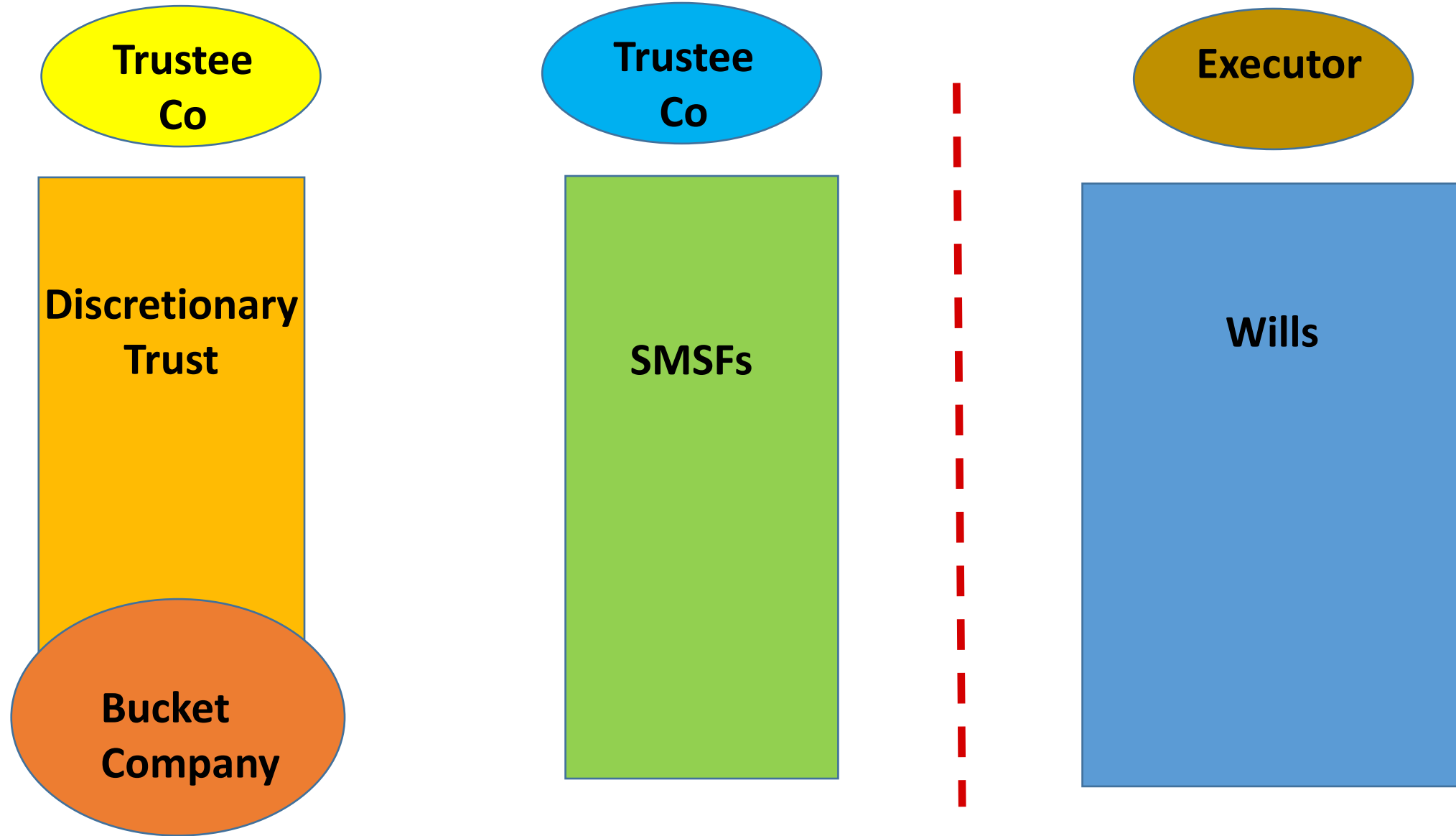






This is our Radical Restructure!

# Historical Structuring



# What are the weaknesses

- The bucket company is great for tax minimisation but terrible for asset protection and family provisions claims
- The trustee companies can be attacked in litigation, by creditors, family law and definitely in family provisions claims
- The discretionary trust needs to be modern and with a chain of appointors at least of it can be attacked in litigation, by creditors, family law and definitely in family provisions claims
- The SMSF is problematic and lack of control is guaranteed – we try by making voting proportional but that is only a stop gap and what is it with transferring super to an estate???

# 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](#).



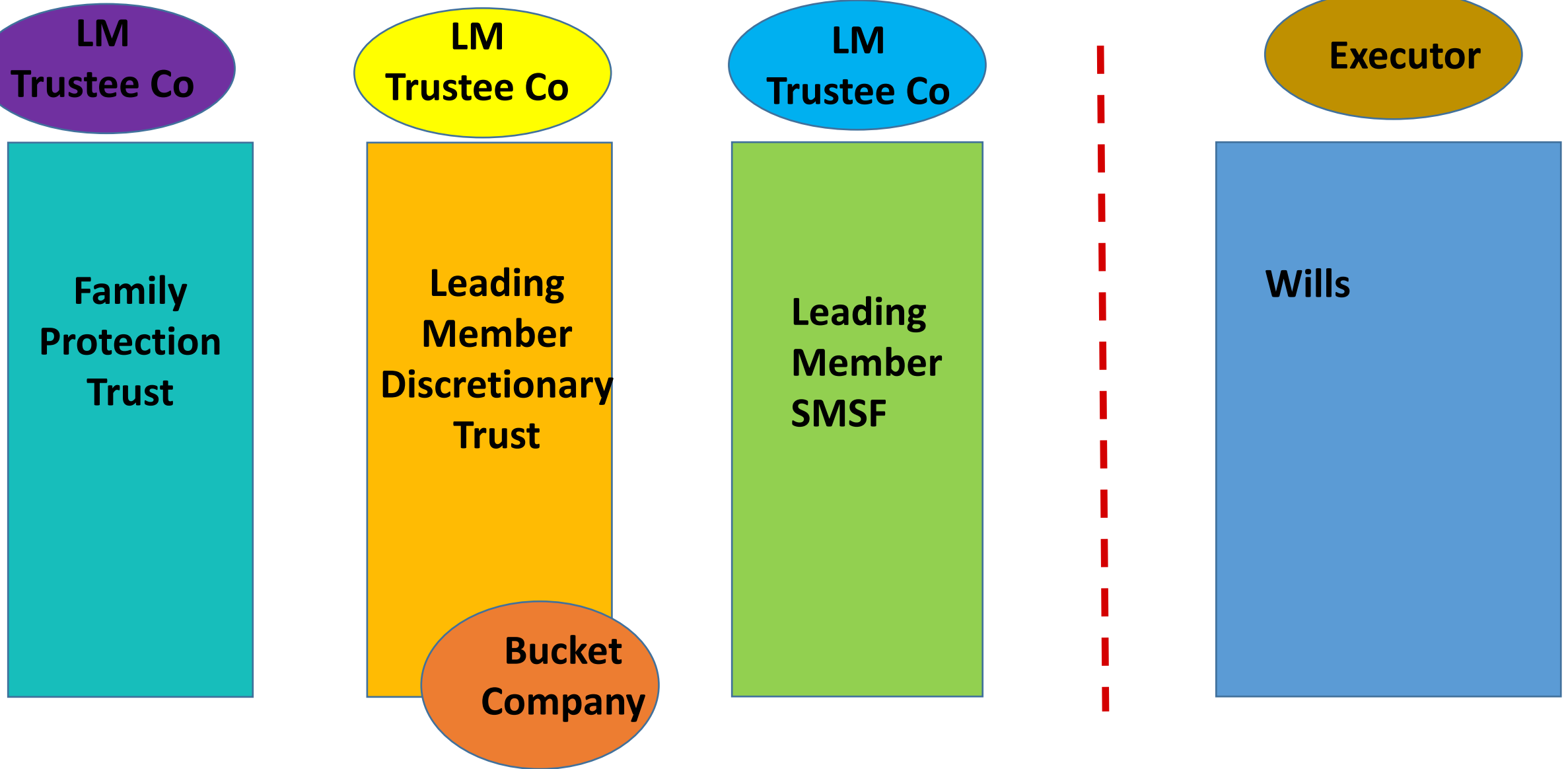


# What is a better way?

- Leading Member wrap around across all structures with the exception of the Will but the Leading Member should be the Executor or in control of the Executors
- The main focus is the succession of leading members which then translates into succession of appointors, executors, directors, attorneys and trustees
- Assets to be shifted to the SMSF or Family Protection Trust for tax and estate planning stability
- Where it is prohibitive to transfer assets due to capital gains tax and also stamp duty then use The Protector as gift loan back



# The New Structuring



# Some facts pre-build

- Ken & Rose are equal shareholders and directors of Butchery PL...operating a successful retail butchers shop.
- They have 2 adult children, Harry (in an 18mth relationship with Sally) an employed apprentice butcher, the other William single in the Army.
- William hates Sally...
- K&R aspire to purchase the shop they currently lease....interested in LRBA via a new SMSF.
- K&R have significant equity in their \$1m home.....with only \$200k mortgage
- K&R have old wills executed prior to children being born

# Suggestions from John Gowing

- Prepare new mirror wills for K&R with reciprocating distributions upon death of first to die, then for survivor providing for a testamentary trust for each primary beneficiary ( 2 sons)
- Shares in Butchery PL to pass to control from survivor to of Harry if /when he finishes his apprenticeship
- Prepare BDBNs to be signed once new SMSF is established with corporate trustee



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