

THE ROLE OF TRUSTS IN THE ESTATE PLAN

1. Spanner in The Works: Effective Trust Distributions After Owie's Case
2. Family Trusts for the Next Generation: Who's in Control?
3. Protecting Vulnerable Beneficiaries Through Trusts
4. Dealing With Trusts and Asset Revaluation Reserves: Where to from here?
5. Angel of Death, Section 100A and Other UPE-Related Estate Planning Challenges

5 PROGRAM ON-DEMAND WEBINAR SERIES



... Leaders in online professional development for lawyers & accountants

ABOUT THIS SERIES

What's covered

In the complex and ever-evolving landscape of estate planning, legal professionals and financial experts play an instrumental role in ensuring the secure and efficient transfer of wealth to future generations. At the heart of many successful estate plans lies the versatile and powerful tool of trusts. Entrusted with the financial welfare of their clients, lawyers and accountants must navigate the intricacies of various trust structures to tailor personalized solutions that protect assets, minimize tax implications, and honour the intentions of the grantor.

In this five part webinar series, learn directly from the experts as they delve into the fundamental role of trusts in modern estate planning, offering a comprehensive analysis of their benefits, classifications, and strategic implementation to guide lawyers and accountants in optimizing estate plans and safeguarding the legacies of their clients. Topics covered include navigating trust distributions after *Owie's* case, how control of family trusts can be effectively passed from one generation to the next, as well as protecting vulnerable beneficiaries through trusts. Other dedicated sessions examine asset revaluation reserves, as well as Section 100A and other UPE-related estate planning challenges.

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On demand webinars and technical materials

You will have access not only to the on demand webinars but also to the detailed technical materials prepared by members of the faculty for this series

THE PROGRAMS

Program 1: Spanner in The Works: Effective Trust Distributions After Owie's Case

The Victorian Court of Appeal decision of *Owie* [2022] VSCA 142 has certainly thrown a spanner in the works in the world of discretionary trusts by challenging the idea that trustees of discretionary trusts have absolute discretion when it comes to making distributions for the benefit of beneficiaries. Following this decision, there has much been debate and questions asked about the impact of this decision. This session shall explore the differing views held by the profession and seek to provide guidance in relation to questions such as:

- How do trustees now properly exercise discretion where there are multiple beneficiaries?
- Have the obligations of trustees been expanded? To what extent do trustees need to be informed as to the circumstances of beneficiaries to be able to properly consider them and how should this be documented?
- In what circumstances can beneficiaries now challenge the trustee's exercise of discretion?
- What rights do beneficiaries now have to information/documents and how should this be managed)
- When might a Court seek to interfere with trustee decisions? In what circumstances will the court step in and what remedies will it grant if it does interfere?
- Can the problem be overcome by narrowing the class of beneficiaries? Or does that itself create problems?
- What advice should now be provided to clients post-*Owie*?

Program 2: Family Trusts for the Next Generation: Who's in Control?

How family trusts are controlled, and how control might be passed from one generation to the next, are integral questions that need to be navigated by estate planners. This session will take a deep dive into the options available to achieve a change of control in a family trust and explore related issues including:

- Understanding the formal legal mechanisms to manage and shift control of family trusts
- Unintentional resettlements, protecting 'at risk' or vulnerable family members and the role of guardians
- Tips for drafting and reviewing trust deeds and powers of appointment (including lessons from *Mercanti* and managing fiduciary obligations flowing from appointment)
- How to manage the potential tax consequences that can arise
- FIRB considerations for foreign residents
- Practical case studies

THE PROGRAMS

Program 3: Protecting Vulnerable Beneficiaries Through Trusts

While a well-considered estate plan is always important, the structure of the plan is more important when there are vulnerable family members. Whether that be a person with a disability, someone struggling with addiction, or in a risky profession or otherwise financially vulnerable, there is often a desire of the testator to provide for their financial future while protecting them from undesirable or harmful behaviour. This is easy said than done in most cases. This session will examine:

- The different types of vulnerable beneficiaries and the pros/cons of the options available to provide for each (including protective and special disability trusts)
- Practical issues which need to be addressed as part of planning:
 - ability to move assets exempt of duty and CGT
 - preserving entitlements to social security benefits
 - identifying and quantifying future financial needs
- Practical tips to limit the risk of conflict including communication strategies, who to involve in the planning and trust structure and when
- The extent to which a testator can validly exert control over beneficiary behaviour and/or use of funds after death in light of recent cases including Mead & Lemon
- Practical case studies

Program 4: Dealing with Trusts and Asset Revaluation Reserves: Where To From Here?

The 2016 High Court decision of Fischer & Ors v Nemeske was significant as it held (but only in a 3-2 majority decision) that a trustee had validly exercised a power to advance and apply trust capital/income, by creating a debt enforceable at law that reflected the increase in value of the trust asset when the “advance” was made. At the time of this decision, a number of questions arose including how best to confer entitlements out of asset revaluation reserves and how to manage trust assets noting the right of beneficiaries to sue for their entitlement in law or equity. Fast forward to 2023, and it is questionable whether the High Court (as constituted now) would arrive at the same decision and whether Fischer & Nemeske remains good law today. This session will take a deep dive into these issues and explore from a trust management perspective:

- How to create the asset revaluation reserve under a trust deed
- Tips for ensuring distributions can be made from it and how to minimise challenge from beneficiaries
- How to confer entitlements out of asset revaluation reserve and what to consider
- For trusts established prior to Fischer, what to look out for when reviewing the trust deed, how to identify when trust variation is required and tips for managing this

THE PROGRAMS

Program 5: Angel of Death, Section 100A and Other UPE-Related Estate Planning Challenges

In 2022, the ATO released its finalised Tax Determination 2022/11 as part of its efforts to target and manage the proper use of unpaid presentation entitlements (UPEs) in estate planning and other family arrangements. This session will look closely at issues and strategies for dealing with UPEs and accumulated wealth in corporate beneficiaries, including:

- The role UPEs can play (and when not to use them) to achieve estate planning objectives
- Unpacking the recent AAT decision in Bendel and Commissioner of Taxation [2023] AATA 3074 and its practical implications
- Sub-trusts and PCG 2017/13
- Identifying s100A problems and how to mitigate the risks
- Specific considerations when dealing with corporate beneficiaries in the estate plan
- The angel of death strategy: advantages and dangers of shifting wealth just prior to death
- Family trust elections – when might they be a problem and how to manage the risks
- Practical case studies

THE FACULTY

Nathan Yii, Principal Lawyer, Chartered Tax Advisor, Trusts and Estates Practitioner and SMSF Specialist Advisor, Nathan Yii Lawyers, Melbourne, Vic

Nathan Yii is the Principal Lawyer, Chartered Tax Advisor and an accredited SMSF Specialist AdvisorTM of the Melbourne based legal practice, Nathan Yii Lawyers. He is a graduate of Melbourne Law School and holds a Bachelor of Commerce (Accounting), a Bachelor of Laws (Hons) and a Master of Laws. He is a leading structuring and estate planning lawyer, a university lecturer and presenter and is recognised in Doyles' Guide as a Preeminent Wills, Estates & Succession Planning Lawyer and a Leading Wills & Estates Litigation Lawyer in Victoria in 2021.



Nathan takes a strategic approach to legal practice and focuses on tax-effective solutions, estate planning, asset protection, SMSF compliance and trusts, estates and SMSF disputes. He works with and consults to high net worth individuals, family offices, legal and non-legal professionals and their clients.

Nathan is a regular presenter in his areas of interest and expertise and regularly presents for legal and accounting CPD providers and discussion groups around Australia. He is also an adjunct lecturer and advisory committee board member for the Estate Planning Practice Specialisation in the Master of Laws program at the College of Law.

Rohani Bixler, Director, Sage Succession Law, Mornington, Vic

As the Principal Lawyer at Sage, Rohani is well placed to assist with questions about Wills, Trusts, and Estates.

Rohani supports people to make informed decisions about succession strategies, whether in the planning or administration phase, or in the process of estate litigation.



She has practiced exclusively in estate planning, estate administration and estate litigation since 2006, working with City, Suburban and Peninsula-based firms.

She has extensive experience with the creation of bespoke solutions for complex family concerns, including planning for vulnerable beneficiaries, blended families and private businesses.

THE FACULTY

Patrick Ellwood, Director, Clover Law, Brisbane, Qld

Patrick Ellwood is a lawyer with over a decade of experience assisting high net worth individuals and family business owners.

He is the founder of Clover Law, an Australian law firm specialising in tax structuring, estate planning, superannuation and asset protection.

He is a regular speaker for a range of private and professional bodies and is a published author of a number of legal textbooks.



Matthew Burgess, Director, View Legal, Australia

Matthew Burgess co-founded specialist firm View Legal in 2014, having been a lawyer and partner of one of Australia's leading independent law firms for over 17 years. Matthew's passion is helping clients successfully achieve their goals.

Matthew specialises in holistic estate planning (including trusts, tax, asset protection, structuring, business succession and superannuation).

He has been recognised for many years in the 'Best Lawyers' list in relation to trusts and estates, and wealth management/succession planning and either personally or as part of View in Doyles' in relation to taxation, and wills, estates and succession planning.



THE FACULTY

Daniel Taborsky, Managing Director, Chartered Tax Advisor, Birchstone Tax Law, Perth, WA

Dan has practised solely in tax for his entire career. His experience includes working as a senior tax lawyer in Perth and Sydney for EY Law and Greenwoods & Herbert Smith Freehills. Dan has also lectured for the University of Western Australia (UWA) in their Master of Taxation course. He regularly presents and writes on tax issues for leading professional bodies including The Tax Institute and the Law Society of WA.



Dan holds a Bachelor of Law (First Class Honours), a Master of Professional Accounting and a Master of Business (Finance and Economics). He is a Chartered Tax Advisor (CTA).

Outside of work, Dan is as obsessive with his personal pursuits as he is at work. In the past he has competed in multiple Ironman triathlon races and has completed a solo crossing to Rottnest Island. Fortunately, Dan's lovely wife Alison Taborsky, along with their son Harrison, brings some balance to his homelife.

WHAT YOU GET

This video webinar series includes the following components:

- Online access to the on-demand webinar programs. Programs are expected to be 1 hour each in length.
- The programs are being recorded in early to mid-September 2023 and will be available to purchasers online shortly thereafter.
- Online access to the technical support papers and/or powerpoint presentations accompanying each program.



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