

SUPER AND DEATH FOR LAWYERS: UNRAVELLING THE AFTERMATH

1. Decoding Death Benefits: Determining the Recipients
2. Super Death Benefits: Untangling the Tax Web for Effective Planning
3. How Binding are Binding Death Benefit Nominations?
4. Reversionary Pensions: A Path to Secure Estate Planning?
5. Who's Running the Show: Keeping Control of an SMSF

5 PROGRAM ON-DEMAND WEBINAR SERIES

TEN THE EDUCATION NETWORK



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ABOUT THIS SERIES

What's covered

While superannuation is primarily designed to secure retirement, it often leaves a substantial financial legacy upon your passing. In this five part webinar series, learn directly from the experts as they dive deep into the rules governing the distribution of these funds. Explore strategies for keeping assets within the superannuation system, ensuring wealth distribution aligns precisely with your intentions, and minimizing tax liabilities along the way. It also examines keeping control of an SMSF following incapacity or death, as well as the roles BDBNs and reversionary pensions can play in ensuring the smooth distribution of death benefits.

Training for as many staff as you want – no additional cost!

A single purchase entitles your company to access the on demand webinars online as you require them for as many training sessions and for as many staff as you want.

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: Decoding Death Benefits: Determining the Recipients

Unlocking who can, and should, receive death benefits may not be as straightforward as it seems. Traditionally, the answer was simple: a child or a spouse classified as a SIS dependent. However, the definition of these terms has become increasingly complex. Moreover, if you wish to allocate death benefits to the estate, what avenues are available to you? And when can your death benefits go to others on the basis of financial dependency or independency? This session delves into these issues, including:

- Understanding the classes of SIS dependant
 - who is a child? Adopted and foster children, step children and former step children
 - who is a spouse?
 - financial dependency – grandchildren, stepchildren, companions in old age
 - interdependency – who qualifies?
- Understanding the difference between a SIS dependant and a tax dependant and why it's important
- Channelling benefits to the estate:
 - rationale behind this choice
 - the power of a testamentary trust
 - super proceeds trust as an alternative option

Program 2: Super Death Benefits: Untangling the Tax Web for Effective Planning

The effective succession planning of superannuation assets requires a comprehensive understanding of the intricate tax implications surrounding super death benefits. This session aims to untangle the complex tax web woven around these benefits, providing an in-depth analysis of the various tax treatments, considerations, and strategies involved. It covers:

- Distinguishing the taxable component and concessional contributions
- Identifying the tax-free component and non-concessional contributions
- Strategies for reducing the taxable component
- Life insurance proceeds – how and why they are different
- Defined benefit funds – how are they different?
- Practical case studies involving distributions to tax dependents and non-tax dependents

THE PROGRAMS

Program 3: How Binding are Binding Death Benefit Nominations?

With superannuation balances forming a considerable amount of a person's wealth on death in many cases, the issue of who is to be the recipient of those amounts can be the subject of intense scrutiny. A binding death benefit nomination (BDBN) can be the tool that channels the deceased's member balance to their desired recipient, however, sometimes the road isn't as smooth as some would like. This session explores the issue, including:

- When can a BDBN be used and who can be included as potential beneficiaries?
- Why are some BDBNs considered invalid at crunch time?
- Recent cases where BDBNs have been challenged, including:
 - Application by Ellasil Pty Ltd [2023] VSC 69
 - Hill v Zuda Pty Ltd [2022] HCA 21
- Can a BDBN that satisfies all technical requirements, be successfully challenged?
- Can a change of trustee affect a BDBN?
- The interaction of the BDBN with the estate plan, including:
 - consequences if one practitioner advising on wills and another on BDBNs, are not on the same page
- What are the consequences if a BDBN is ruled invalid?
- Checklist to assist in ensuring validity of a BDBN

Program 4: Reversionary Pensions: A Path to Secure Estate Planning?

Are BDBNs the only way to ensure the smooth distribution of death benefits? Reversionary pensions offer an alternative. This session delves into the practical application of reversionary pensions as a tool for estate and tax planning. It covers:

- Reversionary pensions – advantages and drawbacks
- Who can be a reversionary pensioner?
- Documenting reversionary pensions – best practices and essential considerations
- Reversionary pensions and the transfer balance cap
 - what if the reversionary pension could lead to a breach?
 - what are the implications of a breach?
- Impact on total superannuation balance of recipient and implications
- Case study involving reversionary pensions in blended families
 - safeguarding the interests of the second spouse and children of the first marriage
 - commutation of reversionary pensions
 - what happens to the account balance when the reversionary pensioner dies?

THE PROGRAMS

Program 5: Who's Running the Show: Keeping Control of an SMSF

On the setting up of an SMSF, all members are required to be individual trustees or directors of a corporate trustee. However, life events such as incapacity and death, require someone to fill the shoes of the replaced individual. This session explores how this works in practice, including:

- What role does a fund's deed and company constitution, if applicable, have in determining a replacement trustee?
- How significant is the role of shareholder of an SMSF corporate trustee?
- Enduring power of attorneys (EPOAs):
 - are these the automatic replacements for a member who loses capacity? (SMSFR 2010/2)
 - course of action to take if no EPOA arranged or probate/letters of administration are delayed
- Lessons from cases (Katz v Grossman [2005] NSWSC 934; Ioppolo and Hesford v Conti [2013] WASC 389)
- How is the fund taxed if a breach of the required number of trustees appointed occurs?
- Checklist of action to take for trustee appointment:
 - on incapacity of a member
 - on death of a member
- Case study
- Best practice in providing for the transfer of control on death
 - harmonious family – one surviving spouse
 - harmonious family – no surviving spouse
 - warring siblings – no surviving spouse
 - blended family – second spouse needs protection
- What provisions do you need –
 - in the trust deed?
 - in the will and the EPOA?

THE FACULTY

Laura Hanrahan, Special Counsel, Hall & Wilcox, Brisbane, Qld

Laura specialises in the areas of family business succession, estate planning and superannuation.

Laura has over 18 years' experience working with private clients and family businesses in crafting and executing succession plans.

Laura's key focus is to understand each individual or families motivation for their succession planning and tailor an appropriate plan for the individual or family.

Laura has been listed in the Best Lawyers in Australia from 2020 to the latest 2023 edition for Trusts and Estates and Wealth Management / Succession Planning Practice.



Paul Salinas, Director, SMSF Specialist Advisor, Artisan Legal, Canberra, ACT

Accredited SMSF Advisor, Nationally recognised family law superannuation specialist, Doyles Guide recognised.

Paul is a Superman. He doesn't mean that he has any super powers but if you need advice on anything to do with superannuation, splitting superannuation or estate planning then Paul is your man. Paul loves SMSFs and the freedom of choice they give you in your retirement planning, however, with great power comes great responsibility. It is important to get things right to ensure you don't find yourself in trouble with the regulators, but also to ensure that your money and your estate ends up with where you want it to be when you pass away.

Outside of the office Paul is the chair of local community for the SMSF Association, Australia's peak body for the SMSF sector. He is also the chair for Advocacy for Inclusion, a not for profit that advocates for those with disabilities and helps them advocate for themselves.



THE FACULTY

Nathan Yii, Principal lawyer, 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.

Jennifer Dixon, Practice Leader, Moores, Melbourne, Vic

Jennifer Dixon is a Practice Leader and heads up the Private Clients Team at Moores. With one of the largest specialist estate planning teams in the country, Jennifer and her team assist clients and their advisors through the maze of planning for death and disability right through to addressing the administration of estates and private entities like trusts and SMSF's. While the focus of the team is on dispute prevention, they also advise and guide clients through disputes and litigation associated with these areas.



Jennifer holds an honours degree in law and a diploma of financial services. She is an accredited specialist in two fields, namely: in Wills and Estates in Victoria, accredited by the Law Institute of Victoria; and as a Fellow SMSF Association Specialist Advisor / FSSA. Jennifer is an in demand speaker across Australia to professional audiences in these areas.

Over the last seven years, Jennifer has been recognised as a preeminent and leading practitioner in Doyle's Guide across the two categories of Wills, Estates & Succession Planning and Wills & Estate Litigation.

THE FACULTY

Phil Broderick, Principal, Sladen Legal, Melbourne, Vic

Phil is a principal of Sladen Legal and heads its superannuation team. He is member of a number of superannuation related committees. This includes being a member of The Tax Institute's superannuation committee and the chair of Tax & Super's technical and policy committee.



He is also a member of number of the ATO's superannuation liaison groups including the Superannuation Industry Relationship Network (SIRN) and the Superannuation Industry Stewardship Group (SISG). Phil is also heavily involved in liaising with Treasury and ATO in relation to the implementation of new super laws and administrative practices.

Phil's areas of practice include superannuation, duties and state taxes, estate planning and succession, trusts, federal tax and business structuring.

Phil was listed in the 2020 to 2023 Best Lawyers Australia for superannuation law and was the winner of the SMSF Association's SMSF Specialist Advisor (SSA) Top Achiever Award in 2019. His articles have featured in The Tax Institute's Taxation in Australia Journal and CCH's Super News. He has presented at seminars and conferences conducted by The Tax Institute, the SMSF Association, TEN The Education Network, Legalwise and various accounting bodies.

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 late October/early November 2023 and will be available to purchasers online in the second week of November
- Online access to the technical support papers and/or powerpoint presentations accompanying each program.



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