

# THE 14TH ANNUAL SMSF CONFERENCE

A two-day conference organised by Television Education Network Pty Ltd

Palazzo Versace, Gold Coast, Thursday 5 & Friday 6 September 2019

Managing the transfer balance account reporting obligation  
Keeping on top of the total super balance  
Maximising super using the small business CGT concessions  
Claiming exempt current pension income – the new landscape  
Aligning estate plans with SMSF investment strategies  
Managing the \$1.6million cap strategically  
Dealing with deficient SMSF trust deed dilemmas  
BDBNs – not so binding after all?  
Challenging SMSF trustee discretion in death benefit payments  
When executors carve themselves a slice of the super death benefits pie  
SMSFs and liability for losses: Are advisers in the firing line?  
Managing incapacity risk in SMSFs

**FEEDBACK FROM LAST YEAR'S CONFERENCE:**

"Topics were excellent, presenters knowledgeable and entertaining."  
"Great content and great mix of speakers."  
"Very good speakers and great content covered - real life examples provided to show how relevant these issues are."



The professional development specialists

# DAY 1 - THURSDAY 5 SEPTEMBER 2019

**CHAIR - DAY 1: BERNIE O'SULLIVAN,  
PRINCIPAL, BERNIE O'SULLIVAN  
LAWYERS, MELBOURNE**

**MORNING THEME: COMPLIANCE NUTS AND BOLTS**

**9.00 - 9.10am**

Introduction and welcome

**9.10 - 9.55am**

**Session 1: Managing the Transfer Balance Account Reporting Obligation: Lessons from the Frontline**

Confusion continues to surround the transfer balance account reporting obligations that now apply. This session examines the challenges of the reporting obligations and the lessons we can learn from how they operate in practice. It covers:

- What is reportable and when? - events that affect a member's transfer balance
- Events an SMSF does not have to report
- What happens when fund is reporting quarterly when pension started on 1st July?
- Are lump sum payments reportable under TBAR?
- What is reportable under TBAR when a pension does not meet pension standards?
- Drawing above client's minimum pension - do you report excess pension as a debit?
- Paying a lump sum when in accumulation - what are TBAR reporting requirements?
- Is it still necessary to lodge a report where there are no reportable events?
- What are the penalties for failing to lodge TBAR report on time?
- Case studies on TBAR reporting

*Speaker: Andrea Carrick, Director, AG Tax Lawyers, Melbourne*

**9.55 - 10.05am** Panel Comments and Questions

**10.05 - 10.50am**

**Session 2: Keeping on Top of the Total Super Balance**

By now, most advisers are across the fundamentals involving the total superannuation balance. However, it continues to be a great risk area for clients in light of the traps around measurement of the total super balance. This practical session examines the key TSB milestones that advisers need to be aware of under the new super rules. It covers:

- Defining the total super balance - difference from transfer balance cap
- Calculating the total super balance and valuation of assets
- Calculating key caps and contributions:
  - Unused concessional contributions cap
  - Non-concessional contributions cap
  - Government co-contributions
  - Tax offset for spouse contributions
- Ensuring you don't exceed the cap
- What happens when you exceed the cap?
- Reviewing investment strategies as part of your cap management strategy

*Speaker: Peter Crump, Private Client Adviser, AMP Advice, Adelaide*

**10.50 - 11.00am** Panel Comments and Questions

**11.00 - 11.25am** Networking Break and Morning Tea

# DAY 1 - THURSDAY 5 SEPTEMBER 2019

**11.25am - 12.10pm**

## **Session 3: Maximising Super using the Small Business CGT Concessions**

The small business CGT concessions provide qualifying taxpayers an invaluable opportunity to make contributions into their SMSF. This session examines how to best identify and assess opportunities to boosting super using the CGT cap, including:

- Eligibility requirements to access the small business CGT concessions
- Interaction with the work test
- How the CGT cap operates with the CGT retirement exemption and the CGT 15-year asset exemption
- Should an active asset be acquired in an SMSF?
- Timing and record-keeping requirements
- Case studies highlighting how to increase super using the CGT and other contributions caps

*Speaker: Michelle Griffiths, Partner, TAG Financial Services, Melbourne*

**12.10 - 12.20pm** Panel Comments and Questions

**12.20 - 1.05pm**

## **Session 4: Claiming Exempt Current Pension Income: The New Landscape**

Calculation of ECPI is complex, particularly in light of recent reforms. This session unravels the complexities, and examines when an actuarial certificate is required for a fund. It covers:

- Defining disregarded small fund assets - the disregarded small fund asset rules
- Understanding which funds can no longer have segregated assets
- Restriction on setting aside specific assets to support the pension account
- What if the accumulation account is paid out in full in mid-year?
- Which funds use the segregated method during the year?
- What happens where the fund switches into or out of full pension phase in a year?
- When do you need actuarial certificates?
- Understanding the rules on claiming ECPI on fund administration
- TBAR and disregarded small fund assets
- Unpacking the 2019 Federal Budget reforms

*Speaker: Melanie Dunn, SMSF Technical Services Manager, Accurium, Hobart*

**1.05 - 1.15pm** Panel Comments and Questions

**1.15 - 2.15pm** Luncheon

## **AFTERNOON THEME: SMSF PLANNING STRATEGIES**

**2.15 - 3.00pm**

## **Session 5: Aligning Estate Plans With SMSF Investment Strategies**

Effective estate planning builds flexibility that benefits beneficiaries. However, when it comes to SMSFs, there are some traps that must be assessed. This session looks at how this can be done, including:

- Is your estate plan aligned with super rules?
- Understanding the range of estate planning options available within your SMSF
- Nomination options:
  - Non-binding
  - Binding
  - Non-lapsing binding
  - Reversionary
  - Making an SMSF will
- Use of life interest death benefit pensions
- Superannuation dependents - death benefit payment arrangements
- Aligning the estate plan with:
  - Investment strategies
  - Contribution strategies
  - Transition to retirement strategies
  - Pension strategies
  - Insurance strategies
- Super included in testamentary trust assets - does it have same tax treatment?
- Managing estate planning disputes between trustee and beneficiaries
- Case studies - high-worth individual estate planning SMSF strategies

*Speaker: Graeme Colley, Executive Manager, SMSF Technical & Private Wealth, SuperConcepts, Sydney*

**3.00 - 3.10pm** Panel Comments and Questions

# DAY 1 - THURSDAY 5 SEPTEMBER 2019

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**3.10 - 3.55 pm**

## **Session 6: Contribution and Tax Strategies - Managing the \$1.6 Million Cap Strategically**

Getting the right contribution and tax strategy is not a case of one size fits all. Understanding when and how to make adjustments is key and this may come down to careful adjustment. This session looks at the key issues, including:

- Contributions and timing
- Spouse contribution splitting - transferring eligible contributions to your spouse
- Registering for GST when incurring eligible expenses
- What to do when you own your business premises
- To borrow or not to borrow - when that is the question
- Managing in specie transfers efficiently
- Segregating assets to minimize tax - 2 funds?
- Withdrawal and re-contributing - when and how?

*Speaker: Shaun La Motte, Client Director, Pitcher Partners, Melbourne*

**3.55 - 4.05pm** Panel Comments and Questions

**4.05 - 4.25pm** Networking Break and Afternoon Tea

**4.25 - 5.10pm**

## **Session 7: Dealing with Deficient SMSF Trust Deed Dilemmas**

Changes to the super rules bring with it a need to ensure your trust deed is up-to-date. After all, it is arguably the most important document in the life of your SMSF. This session looks at the key issues, including:

- Trust deed health check - ensuring a compliant deed
- Timing of trust deed reviews and when to update
- Insuring fund is compliant with s62 SIS and other key sections
- Trust deed update scenarios:
  - Auto reversionary pensions to prevent CGT on death
  - New insurance arrangements
  - Changes to contribution arrangements
- Trust deed disaster scenarios - incorrectly executed trust deed and its consequences
- Where trustee does not provide necessary permission for relevant transactions
- When fund wishes to undertake an activity not allowed

in trust deed - what next?

- Role of auditor in examining trust deed
- Check list of provisions to look for in any deed

*Speaker: Lisa To, Partner, Bartier Perry, Sydney*

**5.10 - 5.20pm** Panel Comments and Questions

# DAY 2 - FRIDAY 6 SEPTEMBER 2019

## MORNING THEME: GETTING MONEY OUT OF SUPER

### 9.00 - 9.05am

Introduction and welcome

### 9.05 - 9.50am

#### Session 8: BDBNs: Not So Binding After All?

A binding death benefit nomination can provide certainty as to who receives the member's death benefit. While BDBNs sound simple in theory, BDBNs continue to come unstuck on grounds of invalidity. This session examines how to navigate the pitfalls of BDBNs, including:

- Does the trust deed allow for the making of a death benefit nomination?
- When is a binding nomination not appropriate?
- What does the trust deed require for a non-lapsing BDBN?
- Choosing appropriate beneficiaries
- Is renewal of the death benefit nomination necessary?
- Can an EPOA make a BDBN?
- Lessons from *Re Narumon Pty Ltd* [2018] QSC 185

*Speaker: Andrew Smyth, Managing Partner, Robbins Watson Solicitors, Gold Coast*

### 9.50 – 10.00am Panel Comments and Questions

### 10.00 - 10.45am

#### Session 9: Challenging SMSF Trustee Discretion in Death Benefit Payments

What is better for paying out death benefits in a SMSF - a BDBN or trustee discretion? With BDBNs continuing to be a source of confusion and error, trustee discretion has surged in popularity. However, recent cases have highlighted the perils of trustee discretionary determinations for super death benefits. This session examines the key issues involving trustee discretion, including:

- What is acting in good faith and real and genuine consideration?
- Taking account of the intention of the deceased
- Assessing relationship of deceased and dependents and their financial position
- Risks of failing to acknowledge a potential conflict or seek relevant advice
- Inferences that can and cannot be made with eligible recipients
- Duty of trustee to avoid a conflict of interest
- Obligation of trustee to give reasons for exercise of discretion
- When is it appropriate to seek removal of trustee
- Are binding death benefit nominations the answer?
- Case report - *Re Marsella: Marsella v Wareham* [2018] VSC 312
- Case report - *Re Marsella; Marsella v Wareham (No.2)* [2019] VSC 65

*Speaker: Kylie Wilson, Partner, Holding Redlich, Brisbane*

### 10.45 - 10.55am Panel Comments and Questions

### 10.55 - 11.15am Networking Break and Morning Tea

# DAY 2 - FRIDAY 6 SEPTEMBER 2019

11.15 – 12noon

## Session 10: When Executors Carve Themselves a Slice of the Super Benefits Pie

It's not uncommon for a SMSF member to nominate a spouse as executor of that member's estate. However, it can create potential conflict between an executor's obligations and their self-interests in receiving super death benefits in their personal capacity. This session examines a raft of recent cases dealing with executor conflict conundrums and how advisers can best address these issues. It covers:

- Understanding the fiduciary obligations of executors
- When do personal interests conflict with obligations owed to the estate?
- The use of conflict of interest clauses
- SMSFs and the role of the decision maker of the fund - how does this interplay with the role of executor?
- Does the executor's duty change if there is a family provision claim over the estate?
- Lessons from recent cases, including: *Burgess v Burgess*; *Brine v Carter*; *McIntosh v McIntosh*; *Gonciarz v Bienias*

*Speaker: Heather Gray, Partner, Hall & Wilcox, Melbourne*

12.00 – 12.10p, Panel Comments and Questions

12.10 - 1.05pm Lunch

AFTERNOON THEME: MANAGING RISKS IN SMSFS

1.05 - 1.50pm

## Session 11: SMSFs and Liability for Losses: Are Advisers in the Firing Line?

Recent high-profile cases have highlighted liability risk when advising SMSFs. This session examines these recent decisions, their impact on advisers and trustees, and the risk management practices experts should be implementing now to protect themselves from liability for losses. It covers:

- Unpacking the *Cam & Bear* and *Baumgartner* cases
- Has the increased auditor responsibility spread to other professionals?
- What it means for on-boarding and off-boarding of clients
- Exercising caution and limiting scope over your retainer
- Risk management and documentation essentials
- Is it a case of auditing the auditor?

*Speaker: Jeremy Peck, Partner, Moray & Agnew Lawyers, Melbourne*

1.50 - 2.00pm Panel Comments and Questions

2.00 - 2.45pm

## Session 12: Managing Incapacity Risk in SMSFs

Advisers must address incapacity pre-emptively; it's the only way to ensure that the right people maintain control. With our ageing population, it's never been more important for advisers to be across the key issues. This session covers:

- Who determines whether a member/trustee is incapacitated?
- Evaluating the trustee member and shareholder structure of the fund
- Determining who controls the fund on incapacity of each member
- Use of powers of attorney for each member
- Addressing incapacity in the fund deed and corporate trustee constitution
- Determining who has voting rights attaching to share impacted by incapacity
- Power to appoint or remove fund trustee
- Addressing deadlock in voting situations
- Case studies

*Speaker: Nathan Yii, Director, Nathan Yii Lawyers, Melbourne*

2.45 - 2.55pm Panel Comments and Questions

2.55pm Conference Close



# GENERAL INFORMATION

## Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference papers and refreshment breaks and lunch.

The registration fee does not include any travel or accommodation. Delegates are advised to make their own travel arrangements.

## Conference Papers

TEN no longer provides printed copies of conference papers at its events. Access to the papers will be available online to all delegates in the lead-up to the conference (as the papers become available), during the conference and for 30 days after the conference. The papers will be available in .pdf format for easy download to your local computer or portable device.

At the conference TEN will supply printed copies of the PowerPoint presentations.

## CPD/Training Hours

**Accountants:** 12 CPD/Training Hours

## The Conference Venue

**Palazzo Versace Gold Coast**, Sea World Drive, Main Beach

The Palazzo Versace is located in Main Beach in the heart of the Gold Coast, Queensland.

## Conference Delegate Rate at Palazzo Versace

Television Education Network has negotiated a special conference delegate rate with Palazzo Versace:

### Superior Room (for single or twin share)

(this room rate includes a buffet breakfast for 1 person)

**\$309 (GSTinc)**

This rate is strictly subject to availability. **Delegates are advised to make their own accommodation arrangements directly with Palazzo Versace.**

### Hotel Reservations:

Phone: 1800 098 000 (toll free) Phone: (07) 5509 8000 Fax: (07) 5509 8074

Email: [reservations@palazzoersace.com.au](mailto:reservations@palazzoersace.com.au)

[www.palazzoersace.com.au](http://www.palazzoersace.com.au)

## Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

The Gold Coast is easily accessed via Coolangatta Airport - 20 kms away and Brisbane Airport is an easy 1 hour drive. There are also rail and coach services from Brisbane into the Gold Coast.

## Conference Dress

Smart casual attire is suitable. *(note: the temperature in the conference room varies depending on where you are sitting. Light dress is generally OK, but it is advisable that you bring a jacket/long sleeved top in case you need it.)*

## Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the Conference for a 85% refund. Substitute delegates accepted at any time.

## Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN, and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.

