DEALING WITH TRUSTS AND ASSET REVALUATION RESERVES:
WHERE TO FROM HERE?
INTRODUCTION

Changes to the law in recent times has resulted in turbulent times for the controllers of trusts and their advisers.

Some of the developments challenging the effectiveness of trust structures have included:

1. amendments to the bankruptcy legislation to widen the situations in which trust assets might be exposed in the event of an individual associated with the trust becoming bankrupt;

2. continuing attempts (which to date have been unsuccessful) by trustees in bankruptcy to argue that the power of appointment over trust assets is of itself an asset of a bankrupt person capable of being exercised by the trustee in bankruptcy;

3. numerous changes to the application of the Division 7A tax regime to capture and tax arrangements where unpaid present entitlements have arisen following a distribution from a discretionary trust;

4. the reinvigorating of the longstanding section 100A provisions;

5. the Richstar decision, which called into question the level of asset protection that a discretionary trust can provide if a controller of a trust personally becomes bankrupt. The Richstar decision arguably took on further significance when the presiding judge, Justice French, subsequently became Chief Justice of the High Court;

6. various – and numerous - Family Court decisions that have significantly undermined the utility of trusts in certain situations;
7. the government’s decision to abolish the capital gains tax (CGT) exemption for trust cloning in late 2008 and then various forms of trust splitting in 2018, which stripped the owners of many family trusts of the ability to restructure their trusts to achieve asset protection or succession planning objectives; and

8. leading decisions in cases such Bamford, Colonial and Clark and subsequent Australian Taxation Office (ATO) and government responses.

A combination of the above, and many other factors, has meant that the initial creation and ongoing maintenance of any trust structure are critical skills for all advisers working in the area.

This paper and the presentation will highlight some of the key issues to consider with trust deeds in the context of the estate planning and asset protection concept of Asset Revaluation Reserves (ARRs), including:

1. how to create an ARR under a trust deed;
2. tips for ensuring distributions can be made from an ARR and how to minimise challenge from beneficiaries;
3. how to confer entitlements out of an ARR and what to consider;
4. for trusts established prior to the decision in Fischer v Nemeske [2016] HCA 11 (Fischer) (explored below), what to look out for when reviewing the trust deed, how to identify when trust variation is required; and
5. tips for managing trust deed variations to facilitate ARR.

**TRUST OVERVIEW**

It is important to understand the nature of trusts generally, before considering the specific issues that can arise in relation to ARRs.

Broadly, a trust is, in effect, simply a legal relationship where there is:

1. a legal owner of property (the ‘trustee’);
2. who holds the property (‘trust property’);
3. for the benefit of others (the ‘beneficiaries’); and
4. pursuant to certain terms or rules (‘trust deed’).

Importantly, as a trust is a legal relationship, a trust is not a separate legal entity.

Diagrammatically, the structure of a trust is represented below:

**Trustee**

The trustee is the legal owner of the property. The trustee will therefore have the ultimate control over the assets of the trust.

The trustee can be a company or one or more individuals. Where the trustee is a company, the directors of the company will have the day-to-day control of the trust.

As the shareholders of the company appoint the directors, the shareholders will have the ultimate control over the trust.

Despite this ultimate control, the shares in the trustee company will normally only be worth a nominal amount, regardless of the value of the assets in the trust that the trustee company controls. However, the Office of State Revenue, in both Western Australia and Queensland, has the ability to attribute far greater value to the shares in the trustee company - based on the value of trust assets, rather than the value of the shares themselves. Therefore, in relation to shares in trustee companies for trusts in those states, care needs to be taken, from a stamp duty perspective.
Although the trustee is responsible for the day-to-day running of the trust, many trusts also have an ‘appointor’ (also commonly known as a principal, guardian or nominator) who retains ultimate control over the trust. The appointor has the ability to appoint and remove the trustee at any time, and its consent may be required to make any amendments to the trust deed.

If the trust deed or will does not name an appointor, the existing trustee will usually have the power to appoint a new trustee.

**Beneficiaries**

The discretionary trust structure enables income that is earned by the trust to be distributed to the beneficiaries of the trust in such proportions as the trustee decides.

Normally, there are numerous beneficiaries set out - for example, a mother and father; children and grandchildren; any brothers or sisters of any one mentioned before; any other trust in which any of these people are potential beneficiaries; or any company in which any of these people hold any interest. These people are normally referred to as ‘discretionary beneficiaries’. The main reason for including a large number of discretionary beneficiaries is to allow the trustee maximum flexibility when distributing income.

The trustee is able to decide the proportions in which the income of the trust is distributed among these potential beneficiaries, on the basis of what would be appropriate, given the needs of the beneficiaries, and what is most tax effective in any given year.

One common strategy is to include a company as a potential beneficiary of the trust. As companies are currently taxed at a rate that is often much lower than most individual tax rates, it can be an effective strategy to distribute income from the trust to the company so as to limit the overall tax paid by a family group.

Normally there will be one or two people who have an expectation of receiving income from the trust. These people are commonly referred to as the ‘primary beneficiaries’.

Most trusts set out who is to be entitled to the income of the trust if the trustee does not exercise its discretion to decide how to distribute the income. These are known as the ‘default beneficiaries’. Many trusts separately set out who are the default beneficiaries for any income that has not been distributed at the end of each year, and who are the default beneficiaries for capital upon the winding up of the trust. The default beneficiaries are often the same people as the primary beneficiaries.

**Trust deed**

The majority of trusts will be governed by a trust deed. The trust deed sets out how the trust must be run, what the trustees can do in running the trust and who the beneficiaries are. Discretionary trusts have been used as tax effective asset owning vehicles for a long time. Consequently, there are large numbers of trusts, governed by trust deeds that were drafted when the tax and trust laws were significantly different.

It is necessary to review a trust deed periodically to ensure that it allows the trustees to operate the trust in the most tax effective way.

It is also important to review the terms of the trust deed carefully, with particular reference to issues such as:

1. the vesting day (or ending day) of the trust. In all Australian states, except South Australia (potentially unlimited) and Queensland (potentially 125 years), a trust can last for a maximum period of 80 years;
2. whether there is an ‘appointor’. As mentioned above, this person or entity has the ability to remove and appoint trustees at their total discretion;
3. the powers the trustee has in relation to administering the trust. For example, trustees might not always be able to grant security over trust property; and
4. what provisions apply in the event a trustee fails to make a distribution.

**Family discretionary trusts**

The above summary largely summarises both the broad framework of most trusts and specifically the most common form of trust, which is a family discretionary trust. This paper will focus largely on discretionary trusts as opposed to other type of trusts such as bare trusts, unit trusts or fixed trusts.

**Lineal descendant trust (LDT)**

A LDT is a trust established during a person’s lifetime or in someone’s will, for the benefit of their lineal descendants (or bloodline) – children and grandchildren, and so on down the lineal family tree. The range of beneficiaries will not include any spouses of the lineal family tree.

Many parents are concerned that the inheritance they leave to their children could end up in the hands of a son-in-law or daughter-in-law if their child’s marriage were to break down. A properly drafted LDT can assist in keeping an inheritance out of the reach of the Family Court where a beneficiary is involved in a family law property dispute.
If a beneficiary receives an inheritance in their own name, that inheritance will generally be intermingled with the beneficiary’s other assets (e.g., by paying off a mortgage) and will therefore become ‘matrimonial property’ available for distribution by the Family Court. However, if each beneficiary receives their inheritance in a separate LDT, those assets can be kept apart and protected from direct distribution.

How successfully the assets are protected depends on how the will and LDT are drafted, and the circumstances at the time of drafting and when a relationship of a beneficiary breaks down.

DRAFTING PITFALLS RELATING TO TAXATION OF TRUSTS

Generally, the creation of a trust has no tax issues, assuming it is established via settlement of a nominal amount of cash. This comment is subject to the CGT ‘E’ events and in particular issues around CGT events E1 and E2 and trust resettlements, explored in more detail below.

For the vast majority of trusts, the taxation treatment of income and capital gains is identical and regulated by the *Income Tax Assessment Act 1936* (Cth) (*ITAA 1936*).

Following the decision in *Bamford v Federal Commissioner of Taxation* (2009) 178 FCR 260 (*Bamford*), it was announced in late 2010 that there would be a complete ‘rewrite’ of the existing taxation of trust provisions in Division 6 of the *ITAA 1936*.

Broadly, this announcement and subsequent statements was confirmed an intention to:

1. ensure all relevant taxation of trusts provisions were contained within the *Income Tax Assessment Act 1997* (Cth) (*ITAA 1997*);
2. better align the concepts of distributable income and net income; and
3. codify the basis on which capital gains and franked distributions are streamed.

At the time, it was also confirmed that the previously explored ‘entity taxation regime’ that would have seen all trusts effectively taxed as companies was not to be revisited.

The amending legislation subsequently released (which was designed to be an interim solution) dealt only with the streaming of franked distributions and capital gains of the above listed objectives.

The new rules amended the existing Division 6 and inserted a new Division 6E of the *ITAA 1936* as well as amending subdivisions 207-B and 115-C of the *ITAA 1997*.

The status of the complete rewrite remains uncertain with at least three significant due dates for the reforms to be progressed having passed without consequence. At some stage in the future, it is therefore expected that there may be relatively significant changes to the rules surrounding the taxation of trusts.

**Beneficiary liability to tax**

As set out above, because a trust is not a separate legal entity, the starting point is neither it nor a trustee will generally be liable for any tax. This said, usually, an income tax return is required to be lodged by a trustee and there are situations, where a trustee can be required to pay tax.

Other than the specific scenarios where a trustee is liable, it is instead the beneficiaries who are, in the ordinary course, liable to tax on the distributions they receive.

Provided there is a clear intention to create separate trusts, even if the same person or company acts as trustee for multiple trusts, each of those trusts is treated separately for taxation purposes (i.e., the income of multiple trusts is not aggregated).

**Taxation provisions in trust deeds**

It is of fundamental importance that a trust deed should clearly specify the entitlements of the beneficiaries to income and capital of the trust. It is also important that the definition of income in the trust deed and the trustee’s powers in relation to characterisation of receipts should reflect the rules in the tax legislation.

Arguably the key concepts in relation to the taxation of trusts is that the amount of income a beneficiary is ‘presently entitled’ to of the ‘net income’ of the overall ‘income of a trust estate’.

For many years, the fact that the concept of ‘income of a trust estate’ was not specifically defined under the *ITAA 1936* caused some level of confusion.

The *Bamford* case, mentioned above, however confirmed that ‘income of a trust estate’ means the distributable income as determined by general trust law principles and the provisions of the relevant trust deed.

It is therefore critical to ensure that the meaning of income under a trust deed is clearly defined and is understood fully by the trustee and its advisers, as this will have significant consequences about how the trustee should craft its resolutions when distributing the income of the trust each year.

Terms like ‘income’ and ‘net income’ will be defined differently depending on the trust instrument (even deeds that have been sourced from the same provider) and failing to
understand those distinctions can result in inadvertent adverse outcomes for the trustee and beneficiaries. Some of these consequences are discussed in more detail below.

In contrast to the concept of ‘income of a trust estate’, the ITAA 1936 does define ‘net income’ under Section 95 as the total assessable income of the trust notionally calculated as if the trustee itself was a resident taxpayer, after taking into account all allowable deductions.

Therefore, the net income for tax purpose will not necessarily correspond with the net income for trust accounting purposes or in turn for trust law purposes. This can have significant consequences when the trustee resolves to make beneficiaries present entitled to capital gains or franked dividends.

**Streaming capital gains**

Following the Bamford case, as mentioned above, the Taxation Laws Amendment (2011 Measures No.5) Bill (TLAM 5) was introduced to provide clarity and the ability to stream capital gains and dividends to beneficiaries of a trust.

The amendment confirmed the ability for trusts to stream capital gains to particular beneficiaries, subject to the terms of the relevant trust deed.

That is, the ability of a trustee to distribute all or part of a capital gain to a particular beneficiary (or beneficiaries) is dependent on how ‘income of the trust estate’ is defined under the trust deed.

This is important as TLAM 5 requires beneficiaries to be ‘specifically entitled’ to a capital gain, in order for the gain to be streamed to them, and generally the easiest way for a beneficiary to be specifically entitled is for them to receive that part of the capital gain.

Issues may therefore arise when dealing with tax sheltered capital gains amount. For example, where the 50% general capital gains tax discount is applied to a capital gain, 50% of that gain is sheltered from tax.

Depending on the drafting of the trust deed, that sheltered amount, may or may not be included in the definition for ‘income of the trust’.

Broadly, the 50% general capital gain sheltered from tax may be dealt with under the definition of ‘income of the trust’ in one of the following ways in a trust deed:

1. where the definition of income of the trust equals ‘net income’, or where the definition for income of the trust does not include the gross capital gain, and there is no power for the trustee to define income – the non-discount component of the capital gain will flow pursuant to the trust distribution. Steps will then, however, need to be subsequently taken to make a capital distribution of the sheltered 50% capital gain amount to the beneficiary specifically entitled to the non-discount component amount;

2. where the definition of income of the trust includes the gross capital gain, the whole capital gain will be included in the income of the trust and no further distribution will need to be made; or

if there is sufficient power in the trust deed for the trustee to determine what constitutes income of the trust estate – provided the trustee determines that the full capital gain is included in the definition of income of the trust, then the capital gain can be streamed, and relevant beneficiaries made specifically entitled under the distribution resolution.

Complications can also arise when attempting to make beneficiaries specifically entitled to capital gains where there is no income of the trust estate or trust losses exist, and particular care must be taken for the trustee to make appropriate resolutions in these scenarios.

Ultimately then, the trust deed will directly impact on how capital gain amounts can be distributed from a trust to beneficiaries.

**Streaming franking credits**

It is widely understood that Division 207-55(3) of the ITAA 1997 provides that a beneficiary’s share of a franked distribution is equal to the amount included when determining the beneficiary’s share of the trust’s income under section 95 of the ITAA 1936. Division 207 also recognises and permits a trustee to stream some or all of a franked dividend to one or more beneficiaries to the exclusion of others, subject to the requisite powers under the trust deed.

Provided the trust deed expressly permits streaming of franked dividends as a separate class of income, a trustee can choose to make one or more beneficiaries specifically entitled to franked dividends, while distributing other classes of income to different beneficiaries. Any beneficiary who is made specifically entitled to franked dividends is then entitled to the benefit of the franking credits attaching to those dividends.

As with capital gains, before a trustee purports to stream franked dividends as a separate class of income to particular beneficiaries, it is therefore critical that the trustee ensure there is an express power in the trust deed permitting the streaming of different classes of income.
The case of *Thomas v Commissioner of Taxation* [2015] FCA 968, demonstrates a number of key issues relating to the distribution of franking credits by the trustee of a discretionary trust, including the ability to stream franking credits as a separate class of income.

It follows the well-publicised decision of the Queensland Supreme Court in *Thomas Nominees Pty Ltd ACN 010 049 788 v Thomas & Anor* [2010] QSC 417, which relevantly held that franking credits could form part of the income of a trust estate for trust law purposes and be streamed to particular beneficiaries.

The Commissioner was not a party to that earlier decision. The *Thomas* case explores the interaction between section 95 and section 97 of the ITAA 1936 dealing with trust income and Division 207 of the ITAA 1997 dealing with the imputation system.

The decision is a reminder of the need to ensure that trust distributions are made in compliance with the trust deed, the ITAA 1936 and the ITAA 1997, and of the complexities that can arise when streaming different classes of income.

Relevantly, the trustee of Thomas Investment Trust purported to distribute the trust’s income in several consecutive financial years as follows:

1. around 90% of the franking credits and foreign income and 1% of the remaining net income to an individual beneficiary; and

2. the balance of the net income to a corporate beneficiary.

This approach, permitted under the trust deed, saw one beneficiary receive the benefit of the tax offset under the imputation system at their marginal tax rate, while another beneficiary paid income tax on the dividend at the corporate tax rate.

The Commissioner challenged the effect of the distributions and in essence, argued that the franking credits could not be distributed to a beneficiary independently of the franked dividend to which those franking credits related.

The taxpayer contended that the franking credits were in fact a class of income capable of being streamed to particular beneficiaries in accordance with the trust instrument.
The judgement rejects the earlier conclusion in the initial decision in *Thomas* and provides significant guidance in relation to the streaming of franked dividends and franking credits.

The Court held that, although franking credits will generally have a clear commercial value to a beneficiary (as a result of the beneficiary’s ability to claim a tax offset from the credit), a franking credit is not ‘income’ for trust law purposes. Specifically, although franking credits constitute statutory income for the purposes of the gross-up provisions, they are a notional, statutory creation in this regard and do not constitute ‘ordinary income’ under trust law principles.

As a result, the operation of Division 207 makes it clear that franking credits can only ‘attach’ to the franked dividend and cannot be streamed as a separate class of income, notwithstanding any other provision that may indicate to the contrary within the trust instrument.

The outcome of the case can perhaps be best summarised by the following quote from the judgement:

“What cannot occur if the tax offset is to be preserved...is an allocation of the section 95 net income amongst beneficiaries on a particular basis and a distribution of the franking credits otherwise attached or stapled to the franked dividends on an entirely unrelated basis, amongst the same beneficiaries.”

Practically the case highlights a number of fundamental issues when dealing with the taxation of trusts, including:

1. it is critical to ‘read the deed’ before purporting to exercise trust powers, particularly in relation to trust distributions, characterising income, and streaming different classes of income;
2. while reading the trust deed (including all valid variations) is necessary, it will not be sufficient by itself. There are a myriad of related issues that need to be considered that may impact on the intended distribution, aside from whatever powers are set out in the trust instrument. Examples include renunciations and disclaimers by beneficiaries, purported changes that are not permitted under the relevant trust instrument and the effective narrowing (for tax purposes) of permissible beneficiaries due to the impact of family trust and interposed entity elections. These are discussed in more detail below; and
3. distribution resolutions must also be crafted with reference to the trust instrument, trust law principles, the ITAA 1936 and the ITAA 1997. Trustees have a duty to ensure they are aware of their rights and responsibilities under the trust deed and the limitations under the ITAA 1936 and the ITAA 1997. A failure to discharge this duty can mean a trustee is personally liable.

**RULES IN RELATION TO VARIATIONS**

The starting point before considering any specific aspects of an ARR arrangement, as with all trust related strategies, is the need to embrace the ‘read the deed’ mantra.

In particular, if a trust deed does not specifically permit an ARR, a variation to the instrument will likely be required.

Before making any variation to a trust deed the terms of the document must be carefully considered, including in the context of reported decisions concerning variations to trusts. A case that remains a leading example in this area is the decision in *Jenkins v Ellett* [2007] QSC 154 (*Jenkins*).

Broadly the background in this case was as follows:

1. A principal under a trust deed had the ability to remove and appoint the trustee of the trust.
2. The principal purported to rely on a power of variation to remove himself as principal and name a replacement, which effectively changed the schedule to the trust deed that automatically appointed the principal’s legal personal representative (LPR) as his replacement on death.
3. When the LPR of the principal purported to exercise the principal powers following the death of the original principal and was challenged, the Court held that the previous attempted variation was invalid, effectively confirming the LPR’s authority to act as the principal.
4. The attempted variation was held to be invalid because the relevant power in the trust deed was crafted so that it could only be used in relation to the ‘trusts declared’, and in particular, did not extend to varying the schedule to the trust deed.

Generally, the decision here is cited as authority for a number of principles including the following:

1. If an attempt is made to make to amend fundamental provisions (such as appointor powers or indeed the amendment power itself), there must be a specific ability to do so under the trust instrument.
2. Conversely, ancillary provisions should be able to be amended so long as there is a robust power of amendment in the trust deed.

3. This said, the trust deed may expressly prohibit certain amendments, thereby effectively 'hard wiring' those clauses.

4. Furthermore, the exercise of a power of amendment must comply with any restrictions on the exercise of power, for example the need to obtain prior consent from a principal or appointor. The case of Re Cavill Hotels P/L [1998] 1 Qd R 396 is also often quoted in this regard.

In situations where the purported amendment is not within the powers under the deed (or has the consequence of destroying the 'substratum' of the trust) it will be held to be invalid and ineffective; see for Kearns v Hill (1990) 21 NSWLR 107.

In a similar vein, the high profile Western Australian case of Mercanti v Mercanti [2016] WASCA 206 (Mercanti) is relevant, given the detailed analysis about a number of key themes concerning the appropriate interpretation of trust deeds.

One of the particularly interesting aspects in this regard related to whether a schedule in a trust instrument should be considered to be part of the trust deed itself, or whether it in fact is a separate document.

This issue can be important, because often the ability to vary a trust instrument will only be permissible under the terms of the variation power in relation to the trust deed. If the schedule is not part of the trust deed, then it is not possible to amend the schedule.

In the appeal decision for Mercanti, it was held that the schedule did in fact form part of the deed, and therefore, the trustee was able to amend the schedule.

While confirming that the position will always depend on the terms of the trust instrument, the court confirmed that at least in this case, the deciding factors included:

1. the schedule was obviously included as a convenient drafting technique in what was otherwise a standard form document;

2. the definition of the appointor appeared in the trust deed itself (not the schedule) and included components not just of a definition, but also operative provisions; and

3. the definition of the appointor, it expressly referenced the relevant provisions of the schedule.

Interestingly, the case also confirmed that where a power of variation creates the ability to amend provisions ‘hereinbefore’ contained, that word will generally prohibit variations to any provisions after the relevant variation clause.

This conclusion is however subject to the above-mentioned comments – ie if the schedule can be properly deemed to form part of the deed, then even though it appears after the relevant variation power, it will still be possible to amend the schedule.

In the context of the above cases, the decision in Cihan v Cihan [2022] NSWSC 538 (Cihan) is a compelling reminder of the role the courts have - and likely will continue - to have in this area.

The background to Cihan involved a discretionary trust established by a father, as sole individual trustee, with immediate family members (including 2 sons) as potential beneficiaries and one of the sons the sole ‘nominator’ (with the ability to unilaterally change the trustee).

Following numerous falling outs between the father and the sons, a series of 5 deeds of variation seeking to secure control of the trust were entered into by various parties.

In ultimately determining that the only deed of variation that was effective was one that saw the father retain his role as sole trustee and have himself and his 2 sons acting as nominators, with the ability to make decisions by a majority, the court confirmed:

1. The interpretation of the original trust deed was not assisted by it being ‘an inartistic instrument’ - riddled with typographical errors, provisions that repeated others and numbering of items in the schedule which did not line up with the references in the operative clauses.

2. Where there is a wide power of variation (the relevant power in the deed here is extracted at the end of this section), it is rare that a court will seek to curtail the power.

3. Thus, decisions such as in Jenkins (as mentioned above) may be questionable, at least to the extent they rely on an argument that a nominator’s role can not be subverted by the trustee it was designed to supervise by amending a trust deed.

4. That is, if the power to vary under a deed is wide, this can allow a trustee to change a nominator, without the consent of the nominator; and without destroying the substratum of the deed. While this conclusion arguably runs counter to the decision in Jenkins, critically the variation power in Jenkins was materially narrower than in the deed in the case here and similar decisions that have
permitted trustees to unilaterally change an incumbent appointor such as Mercanti (another decision considered above).

5. Furthermore, even whereas here, a deed sets out circumstances in which a nominator would cease to hold office, and the line of succession if that occurred, this did not implicitly curtail the trustee’s power of amendment. Indeed, a power of amendment is perfectly consistent with the existence of specified terms in a trust deed. Any argument to the contrary, taken to its logical conclusion, would in fact prevent any amendments being made at all.

6. The court also rejected an argument that a nominator could have their actions in changing a trustee unwound on the basis of the doctrine of fraud on a power (being an exercise of a power with an intention contrary to, or not justified by, the instrument creating it. In particular, it was held that in the context of a modern discretionary trust, the use by an appointor of a power to replace the trustee so as to maintain or exercise control over the trust will not necessarily be inconsistent with the purpose for which the power was conferred, provided that there is no intention on the appointor’s part that the appointee is to act otherwise than properly in the interests of the trust and in accordance with its terms (see Baba v Sheehan [2021] NSWCA 58, see other publications by View for explanations of this decision).

7. While the trustee here was on record as saying his purpose in establishing the trust was to avoid tax on ‘his’ assets, this of itself did not mean the trust was a sham. In particular the court confirmed that if it were possible to achieve the flexibility and tax advantages associated with a discretionary trust structure while retaining legal ownership and control of the founder’s assets, then ‘everyone would probably do it’. However, the reality is that in order to achieve those results it is necessary for ownership and control of the trust property to be given up, as a matter of law, to the trustee – and this is what had occurred here.

Finally, in relation to extensive debate about whether notice was required to be given to a trustee of their removal before it was effective, the court concluded this was the case - despite the fact that there was no such requirement explicitly set out in the trust deed. This conclusion is in contrast to the decision in Edwards & Anor v Brougham [2022] SASC 8 (also featured in other View publications), where it was held:

1. it is not necessary for a trust deed to have a condition for effective removal of a trustee the giving of notice to the trustee being removed;
2. the key reason for not requiring a removed trustee to be notified is that a former trustee, who continues to exercise powers honestly without notice of their removal, will be protected in several ways, for example they are indemnified by trust assets (assuming they have acted honestly).

Cihan - Power of amendment extract

The Trustee may at any time in its discretion add any member of the Cihan family as a new beneficiary to or take out any existing beneficiary from the deed.

The Trustee may at any time in its discretion by a revocable or irrevocable deed alter, revoke or add to any of the provisions of this deed and may make new provisions in addition (sic) to or to the exclusion (sic) of any of the provisions of this deed, at the time in force, such alteration, revocation or addition shall, if not expressed to be irrevocable, be similarly capable of being altered, revoked or added to by a subsequent deed;

No such alteration, revocation or addition shall result in the Trust Fund or any part thereof becoming payable to the Settlor.

No such alteration, revocation or addition shall have or be construed to have the effect of divesting or varying in any way the interest of any beneficiary in income or capital (sic) of the Trust Fund which has been distributed to that beneficiary pursuant to Clauses 4, 5A or 15;

No such alteration, revocation or addition shall extend or be construed to have the effect of extending the Distribution Date beyond the latest date provided for in this deed.

ARRS

Ultimately the prudent and conservative approach is to ensure there are specific powers in relation to revaluing assets in the trust deed, rather than relying on more general provisions (as was effectively the case in Fischer, see below).

Similarly, as there is no ‘distribution’ of an ARR – rather there is simply a capital distribution - there is arguably no need for anything other than a general power to make distributions of capital under the trust deed.

Again however, the prudent approach is to ensure the trust deed specifically references the ability to make distributions of capital which are charged against a particular type of reserve.

In light of the issues above, in order to ensure there is clarity about the ability for the trustee to create an ARR, and in turn distribute amounts from any reserve to beneficiaries, the conservative approach if to amend the trust deed for a trust before embarking on any ARR arrangement.

Most specialist trust advisers will have recommended wording supporting an ARR arrangement, tailored to align with the existing trust deed involved. Please make contact with View if example wording would be helpful.

Subject to the comments set out above, it is generally possible to ensure there are no tax or duty consequences in relation to:

1. the amendment of a trust deed to allow for ARRs;
2. creation of the ARR; and
3. distribution of the capital as a result of the ARR creation.

There may however be tax issues that arise in relation to the streaming of any taxable capital gain following the sale or realisation of the underlying asset or assets the subject of the capital distribution following creation of the ARR.

Generally in this regard it will be necessary to distribute the full financial benefit of any capital gain (ie the taxable gain and the ARR received initially) to the same recipient, even if via an intermediary trust.

The rules in relation to this particular issue are complex and specific specialist advice should generally be obtained whenever an asset the subject of an ARR is to be sold or transferred.

For completeness however it should be noted that these issues only arise when streaming is intended. That is, if there is no intention to stream a taxable capital gain, the issues flagged above are not relevant.

Similarly, it must be the case that no aspect of the arrangements are analogous to the concerns raised by the ATO in Taxpayer Alert TA 2016/12 (Alert) (concerning income reduction arrangements).

In particular, example 4 of the Alert which involves what the ATO describes as a contrived series of steps that sees a trust revaluing shares in a private company, followed by the declaration of a dividend that creates an accounting loss.
For ease of reference, the full extract of example 4 of TA 2016/12 is set out below.

Example 4 - share revaluation and subsequent dividend creating accounting loss

The trust property of a discretionary trust includes shares in Company A which were acquired for $2.

In 2014-15, the trustee revalues the shares from $2 to $1,400,002 in the trust accounts in recognition of the company having accumulated profits of $1,400,000. The trustee then, purportedly in accordance with the terms of the trust deed, creates a $1,400,000 capital entitlement (sourced from the asset revaluation reserve) in favour of an individual beneficiary (who controls both the discretionary trust and Company A). The entitlement is not paid during the year.

In 2015-16, the trust receives a fully franked $1,400,000 dividend from Company A, and $1,000 in interest income.

The taxable net income of the trust in 2015-16 is $2,001,000. This is the sum of the interest, dividends and a $600,000 franking credit gross up amount.

In the trust accounts for the 2015-16 year, the trustee records the dividend and interest as income and further records a reduction in the book value of the shares in Company A, which is accounted for as a $1,400,000 loss made good out of income.

The trustee determines that the trust income is $1,000. The trustee cites a power in the deed in support of this determination. If the trustee had not revalued the shares, the trust income would have been $1,401,000 (ie the interest income and full amount of the dividend). The trustee of the discretionary trust resolves to make Company B presently entitled to all of the trust income ($1,000), causing its assessable income to include all of the discretionary trust’s taxable net income for 2015-16 ($2,001,000). However, because Company B is entitled to the franking credit offset, it only pays $300 in tax (30% x $1000).

The trustee of the discretionary trust uses the $1,400,000 dividend income to satisfy the individual beneficiary’s entitlement to the $1,400,000 capital distribution created in the 2014-15 income year. The individual beneficiary treats the amount as a taxfree distribution in its hands.
The asserted result is that no tax is payable on the net income of the discretionary trust beyond the imputed 30% even though the entire $1.4m franked distribution received by the trust has been paid to the individual.

**What are our concerns?**

We are concerned that trustees undertaking these arrangements are taking contrived steps to engineer a reduction in the trust income of the trust with the principal purpose of generating significant tax benefits.

From our initial review of these arrangements, we consider that they may lead to various tax and other consequences, including whether:

a. the trustee's determination of income or appointment of income is ineffective under the terms of the trust deed and I or more generally for trust law purposes (e.g., where the trust deed does not give the trustee power to make a determination in the manner stated or the appointment is made to an entity which is not a beneficiary of the trust)

b. the arrangement, or steps within it, is a sham, or is otherwise ineffective to create a present entitlement at general law

c. the arrangement results in a deemed dividend under Div 7A of Part lli of the ITAA 1936 due to the operation of section 109D, where trust income is appointed to a private company and the private company’s entitlement is not fully satisfied

d. the arrangement results in a deemed dividend under Division 7A due to the operation of section 109T of the ITAA 1936, where the arrangement involves payment of a dividend from a private company to the trustee of a trust and the trustee uses the proceeds from the dividend to make a payment or loan other than:
   1. to a private company, or
   2. in discharge of an entitlement to trust income where that trust income includes the dividend

e. the loss integrity rules in Schedule 2F to the ITAA 1936 and Part 3-5 of the ITAA 1997 apply, in particular the income injection tests, limiting the availability of deductions and/or losses to corporate and trustee beneficiaries

f. the qualified person requirement in Subdivision 207-F of the ITAA 1997 restricts the availability of a tax offset in respect of franking credits attached to a franked distribution flowing to a beneficiary

g. the arrangement, or part of it, is a 'reimbursement agreement', and, as a result, the income beneficiary would be deemed not to be presently entitled under section 100A of the ITAA 1936

h. the arrangement is a scheme to which the general anti-avoidance rules in Part IVA of the ITAA 1936 apply, and

i. steps taken by trustees to misstate the trust income in the trust's income tax return amount to evasion.

**ARR CASE LAW**

The seminal High Court decision in *Fischer* accepted the effectiveness of ARRs under trust law.

Broadly, the factual matrix in this case was as follows:

1. family trust owned shares in a company;
2. the trustee of the trust resolved to revalue the shares to market value, crediting the relevant amount to an asset revaluation reserve;
3. following the revaluation, the trustee distributed the reserve to two of the beneficiaries of the trust;
4. as no amount was physically paid, the relevant amount remained outstanding as a debt and a charge (to secure repayment) was granted to the beneficiaries over the shares in the company;
5. following the death of one of the beneficiaries, the other beneficiary under his estate plan transferred the control of the trust to certain parties, with other beneficiaries entitled to personal assets under his will; and
6. the repayment of the loan by the trustee to the estate following the beneficiary’s death was challenged by the controllers of the trustee who sought to avoid the obligation to make the payment.

The High Court by majority held as follows:

1. the resolutions creating the revaluation reserve and subsequent distributions were effective; and
2. this meant that the trustee of the trust was obligated to repay the debt outstanding to the estate.
In reaching this conclusion, it was specifically confirmed that:

“once it is accepted – as it was in In re Baron Vestey’s Settlement; Lloyds Bank Ltd v O’Meara [1950] 2 All ER 891 and in Commissioner of Inland Revenue v Ward [1970] NZLR 1 – that a trustee can “apply” trust property to the advancement of a specified beneficiary by resolving to allocate trust property unconditionally and irrevocably to the benefit of that beneficiary, it is difficult to see any reason in principle why such an unconditional and irrevocable allocation of trust property must take the form of an alteration of the beneficial ownership of one or more specific trust assets.

The allocations in each of those cases were of specified proportions of a single monetary amount which stood to the credit of a bank account which the trustee held as trust property at the time of the resolution. The allocations were held to be sufficient to result in the specified beneficiaries to whom the allocations were made each obtaining an immediate absolute beneficial entitlement to the sums so allocated.

It appears that the sums in question in the first case were soon afterwards paid into separate bank accounts, but that fact does not appear to have been treated as relevant to the holding. The sums in question in the second case were not paid into separate accounts for many years.”

Despite the above comments, it will not always necessarily be the case that interim distributions of capital from an ARR will be effective. Much will turn on the terms of the trust instrument and the relevant resolutions – issues that, as set out above, it is recommended be specifically addressed before entering into an ARR arrangement.

In particular, resolutions must be consistent with the provisions of the trust instrument. Furthermore, the way in which the accounts are prepared should align both with the trust instrument and the relevant resolutions.

Additionally, to the extent a willmaker owes money to another party, assuming the debt is on foot at the date of death, if it is due and payable immediately from the death of the willmaker (which will often be the case), interest from this date is payable until repayment of the principal, at the statutory rate (see Shirt v Westby (1808) 16 Ves 393 and Cole v Walsh as Executrix of the Estate of Alan Harold Cole (deceased) (2023) QDC 41).

This outcome is analogous to where a legacy is left under a will that is stated to be payable immediately from the death of the willmaker, such a gift also creates an entitlement to interest from the date of death (see Re Pollock [1943] CH 338 and Pacella v Sherborne [No 2] [2010] WASC 186).

It is relevant to note that the decision in Fischer largely reflects (in relation to the issues concerning an ARR) the conclusion in an earlier decision, namely the case of Clark v Inglis [2010] NSWCA 144 (Inglis).

Broadly the background in Inglis was as follows:

1. Dr Inglis established a trust in 1982 with himself, his four children from his first marriage, his one child from his second marriage and his second wife as potential beneficiaries;
2. a company named ‘Inglis Research Pty Ltd’ acted as the trustee;
3. the main asset class of the trust was a listed share portfolio that for many years was generally carried in the accounts of the Trust at cost;
4. many years after the establishment of the trust, and a change in the method of preparing the trust accounts, ‘income’, although unrealised, from the increase in value of shares was distributed to various beneficiaries creating (in relation to Dr Inglis) a credit loan account of more than $1 million; and
5. under Dr Inglis’ estate plan, his personal wealth was gifted under his will to his second wife, while control of the trust and its assets was given to the children of his first marriage.

Among other issues in contention following the death of Dr Inglis, the children from his first marriage challenged the legitimacy of the steps that created a credit loan to his benefit from the trust.

The Court held that while the accounting approach was perhaps imprudent, it was permissible under the trust deed and there was nothing under the accounting standards that prevented the arrangements.

In this regard it was noted that the trustee had the specific right under the trust deed to re-categorise income and capital and distribute unrealised income in its discretion; thus it is generally best that such provisions are included, if needs be by way of trust deed amendment.

This meant that there had been no breach of trust by the trustee and the debt owing by the trust to the estate was enforceable and effectively an at call loan, repayable on demand to the second wife.
ARR LEGISLATION

Finally, the concepts concerning an ARR are also contemplated – and arguably supported by legislation.

In particular, the Explanatory Memorandum to the legislation introducing the streaming provisions in Subdivision 115-C of the ITAA 1997 makes reference to distributions of capital from a trust, following asset revaluations.

Specifically, the Explanatory Memorandum refers to:

1. streaming occurring each time an asset is revalued, but before the asset is disposed of by the trust; and

2. the fact that any capital gain tax only being triggered on the disposal of the asset by the trust.

For ease of reference, the full example from the Explanatory Memorandum is as follows.

Example 2.3

The Zhang Trust buys an investment property in 2001 for $100,000. The trustee of the trust has the power to revalue the property according to generally accepted accounting principles and treat any increase in its value as income of the trust.

Each year for the following 10 income years, the trustee revalues the asset upwards by $20,000 and treats this amount as income of the trust. For each of the first five years, the trustee distributed $20,000 from the revaluation to John, who is no longer a beneficiary of the trust.

For each of the remaining five years, the trustee distributed $20,000 from the revaluation to Kevin (who is still a beneficiary of the trust).

In the 2011 12 income year, the trustee sells the property for $400,000. The trustee makes an accounting gain of $100,000 ($400,000 less the revalued amount of $300,000) and a (tax) capital gain of $300,000 ($400,000 capital proceeds minus the cost base of $100,000).

The trustee distributes the $100,000 accounting gain to William.

Assuming there are no losses or expenses, the net financial benefit referable to the gain (over the life of the asset) is $300,000. After applying the CGT discount, the taxable capital gain is $150,000.

Kevin received a $100,000 share of the net financial benefit referable to the gain (in five payments of $20,000) and therefore is specifically entitled to one third of the $300,000 capital gain.

William also received a $100,000 share of the net financial benefit referable to the gain (one payment of $100,000) and is also specifically entitled to one third of the $300,000 capital gain.

There is one third of the capital gain to which no beneficiary is specifically entitled.

(John cannot be specifically entitled to any of the capital gain because he is no longer a beneficiary.)

CONCLUSION

For the time being, the benefits of discretionary trusts are generally still sufficient to make them the preferred structure for asset protection and tax flexibility purposes.

However, given the complexities which can arise from the interaction between the legislation relating to tax, trusts, bankruptcy, family law and ARRs - and the evolving principles arising from cases in these areas of law - it is critical that the trustee and its advisers have fully read the trust deed and understand its terms when administering the trust.

In this regard, arguably the optimal approach for the establishment or review of any trust deed is to methodically follow a tailored checklist. A detailed checklist outlining some of the key issues to consider when reviewing a trust deed is available from View – please make contact if you would like access to this.

ACKNOWLEDGEMENT

The assistance of the team at View Legal in preparation of the paper is gratefully acknowledged.
ABOUT VIEW

At View Legal our mantra is to be ‘for friends’.

In other words creating solutions and value propositions that are compelling to our friends.

To achieve our vision, we have set out to fundamentally and radically revolutionise access to high quality legal advice, in our areas of deep specialisation—structuring, tax, trusts, asset protection, business sales, estate and succession planning.

To help explain the approach View is taking to uniquely deliver valuable legal solutions, the following table lists 10 traditional ways law firms have operated (and, almost exclusively, continue to operate) and the new vision that View is built around.

<table>
<thead>
<tr>
<th>OLD VIEW</th>
<th>VIEW LEGAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill clients on hourly rates (or various, increasingly elaborate, permutations on the theme) and have no particular interest in client perception of value</td>
<td>Customers provided up front ‘SPS Guarantee’ – that is service and price satisfaction is guaranteed with all work undertaken following upfront fixed pricing</td>
</tr>
<tr>
<td>Everything tracked on a timesheet. The longer something takes, the better</td>
<td>No timesheets. Sophisticated project management tools used to help ensure customer expectations are exceeded</td>
</tr>
<tr>
<td>Quality is defined by the law firm</td>
<td>Quality is defined by the customer</td>
</tr>
<tr>
<td>‘Impressive’ CBD office space, with ‘dominant’ fit outs</td>
<td>View meets where best suits customers. No permanent CBD space retained</td>
</tr>
<tr>
<td>Intellectual property is how we make money and should be guarded jealously</td>
<td>Intellectual property is how we create trust and should be shared freely</td>
</tr>
<tr>
<td>Lawyers striving to deliver near-perfect technical excellence</td>
<td>All service designed to be fit-for-purpose, aligning with collaboratively agreed customer objectives</td>
</tr>
<tr>
<td>Lawyers cultural focus on ‘is this billable’ for the firm</td>
<td>Lawyers cultural focus on ‘is this valuable’ for the customer</td>
</tr>
<tr>
<td>‘Leveraging’ of full-time lawyers to do the bulk of the work serving clients</td>
<td>Flexible work practices that match supply with demand</td>
</tr>
<tr>
<td>Constant focus on the ‘need for diversity’ of gender</td>
<td>Only focus on diversity of thought</td>
</tr>
<tr>
<td>Revenue growth the #1 goal</td>
<td>Exceeding customer expectations #1 goal</td>
</tr>
</tbody>
</table>

Significant inspiration provided by VeraSage. Partly adapted with permission of George Beaton, Beaton Capital.

If you would like to learn more about any of the above solutions or View more generally email solutions@viewlegal.com.au.
A SELECTION OF BOOKS FROM VIEW LEGAL

For all the latest books please visit

INTERESTED TO LEARN MORE?

1. Subscribe to the free weekly blog posts:
   http://blog.viewlegal.com.au/?m=1
   To subscribe to the blog, simply enter your email address in the subscription box in the right hand column or alternatively, subscribe through your preferred RSS feed from your browser.

2. View Communities
   The View Communities membership platform provides you with significant access to our community discussion group, free access to our webinars, workshops and roadshows, unlimited access to many of our ebooks, and mentoring sessions with specialist View lawyers.
   Learn more at –
   https://comviewnities.com/

3. Education programs
   View Legal specialises in all forms of adviser education and collaborative learning.
   We are fortunate to regularly present to accountants, financial planners, other lawyers and risk advisers.
   Our programs are tailored to meet your specific requirements and can be delivered in lengths ranging from 20 minute web-based updates to 5 day in-house courses (and every permutation in between) and formats including in person, webinar and video streaming. Our most popular sessions tend to be 90 minute team trainings, which can be recorded for future use.
   A sample of some of our current topics is set out at the following link -
   You can also explore and enrol to all of our View University courses https://viewuni.com/, including the course that complements this strategy paper.
   More generally, each View University course is designed to be relevant for all advisers including accountants, financial advisers and lawyers, other than lawyers who have specialised in the trusts and estate planning space for many years.
   With 35 discrete learning modules and over 15 hours of technical content in each course, including webinars, vidcasts, and technical papers, the university level courses are the first of their kind in the Australian marketplace.
   To learn more about each course and View University more generally, see -
   https://viewuni.com/.

4. Business model iteration
   Matthew Burgess has been recognised as a thought leader in delivery of professional service solutions by peers, industry commentators and competitors. He regularly presents keynotes in this area as well as coordinating and facilitating firm retreats and education programs.
   Indeed, Matthew is the only practising lawyer in Australia who is a Certified Speaking Professional (CSP), a designation conferred by the Professional Speakers Australia (PSA), the industry’s leading organisation. The CSP is likewise the speaking profession’s international measure of professional platform competence.
   Matthew is counted among the rare 12 percent of professional speakers worldwide who currently hold the CSP credential.
   Learn more about Matthew’s business model presentations here –
   Learn more about the 3 business books Matthew has written here -
ABOUT THE AUTHOR

Matthew Burgess is one of the founders of specialist firm View Legal.

Having the opportunity to help clients achieve their goals is what he is most passionate about.

As Matthew always works in conjunction with trusted advisers (whether it be accountants, financial advisers or other lawyers) and their clients, finding ways to fundamentally improve the value received by those advisers, and in turn their clients, has led him to develop numerous game changing models. Examples include providing guaranteed upfront fixed pricing, founding what is widely regarded as Australia’s first virtual law firm and more recently, developing a platform that gives advisers access to market leading advice and support for less than $10 a week.

Matthew’s specialisation in tax, structuring, asset protection, estate and succession planning has seen him recognised by most leading industry associations including the Tax Institute, the Weekly Tax Bulletin and in the 2014 ‘Best Lawyers’ list for trusts and estates and either personally, or as part of View, first in 2015 in ‘Doyles’ for taxation and first in 2017 for wills, estates and succession planning.

Work is one aspect of his life that Matthew loves, so there is no need to be constantly searching for ‘balance’. His other great loves are:

1. Family – they are profiled in various ways through the series of children’s books he has written under the pseudonym ‘Lily Burgess’ – see www.wordsfromdaddysmouth.com.au and various TV commercials;

2. Learning – going cold turkey on television and most forms of media in late 2005 has radically increased Matthew’s ability to study the great authors and inspired him to publish a book that explores the concept of ‘true success’ – see www.thedreamenabler.com.au

3. Health - aside from being a foodie and swimming at least 5kms a week, Matthew installed a stand up workstation in 2007 and among a few other lifestyle choices, it changed his life.
“For years I had known facilitated estate planning could radically improve my service offering for customers ... guiltily using the ‘too busy’ excuse to avoid the issue. Joining View’s adviser community gave me ‘turnkey’ solutions to allow me to immediately deliver solutions to my customers – the guilt is gone and replaced with the excitement of knowing I am now proactively helping customers ... and getting paid well to boot” [accountant, Tweed Coast]

“Particularly post the Royal Commission, compliance is my single biggest pain point and so emotionally draining. My licensee approved View’s adviser facilitated estate planning platform and suddenly it has allowed me to turn my pain into profit. Not only does it get me ‘off risk’ I am also monetising the value I am required by law to deliver” [financial planner, Sydney]

“For years I had known facilitated estate planning could radically improve my service offering for customers ... guiltily using the ‘too busy’ excuse to avoid the issue. Joining View’s adviser community gave me ‘turnkey’ solutions to allow me to immediately deliver solutions to my customers – the guilt is gone and replaced with the excitement of knowing I am now proactively helping customers ... and getting paid well to boot” [accountant, Tweed Coast]

“Particularly post the Royal Commission, compliance is my single biggest pain point and so emotionally draining. My licensee approved View’s adviser facilitated estate planning platform and suddenly it has allowed me to turn my pain into profit. Not only does it get me ‘off risk’ I am also monetising the value I am required by law to deliver” [financial planner, Sydney]
Disclaimer
This paper covers legal and technical issues in a general way. It is not designed to express opinions on specific cases. This paper is intended for information purposes only and should not be regarded as legal advice. Further advice should be obtained before taking action on any issue dealt with in this publication.
The View team has invested over a number of years to develop a significant amount of adviser centric content. A core focus in this regard has been the publication of books. Inspired by one of our heroes, Dr Seuss, all books have covers colour-coded to help identify the genre. In particular:

**Orange covers** are ‘reference guides’. These books provide practically focused content, often sourced from material originally created to improve the skill set of View team members.

**Black covers** are ‘workbooks’. These books again provide practically focused content, however, are designed to be actively ‘consumed’ by readers; invariably, there is space deliberately set aside for note taking by the reader.

**White books** are ‘technical’. These publications are focused solely on providing deep technical content. In all cases, while there will be practical examples, there is a deliberate emphasis on legislative provisions and important court decisions. In most instances, the content will be equivalent to publication standard for organisations such as the Tax Institute of Australia, Thomson Reuters Weekly Tax Bulletin and LexisNexis.

**Select the book format you wish to order**

<table>
<thead>
<tr>
<th>Book Title</th>
<th>Edition</th>
<th>Price</th>
<th>Paperback</th>
<th>Ebook</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estate Planning War Stories – Reference Guide</td>
<td></td>
<td>$29.95</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Inside Stories – Reference Guide Volume II (collection of blog posts)</td>
<td></td>
<td>$60.00</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Inside Stories 2022</td>
<td></td>
<td>$9.95</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Post Death Testamentary Trusts</td>
<td></td>
<td>$29.95</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>40 Forms of Trusts – Workbook</td>
<td></td>
<td>$29.95</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Probate and Estate Administration Workbook</td>
<td></td>
<td>$29.95</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>The Seven Foundations of Business Succession (5th edition)</td>
<td></td>
<td>$135.00</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>The Science of Sales - Workbook</td>
<td></td>
<td>$29.95</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Blended Families</td>
<td></td>
<td>$29.95</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>The Dream Enabler – Reference Guide</td>
<td></td>
<td>$30.00</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>The Dream Enabler – Workbook</td>
<td></td>
<td>$30.00</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Probate and Estate Administration Workbook</td>
<td></td>
<td>$29.95</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>The Six Foundations of Taxation of Trusts (2nd edition)</td>
<td></td>
<td>$135.00</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>
## Book order form

**View Legal books**

**Customer details**

<table>
<thead>
<tr>
<th>Name</th>
<th>Email</th>
<th>Postal address</th>
</tr>
</thead>
</table>

**Payment to be made by - Direct Credit** to National Australia Bank Account

- **BSB:** 084004
- **Account No:** 84-589-9839

*Please quote ‘Book order – [insert name]’ in the subject line.*

**Credit Card** (*Please note we do not accept American Express. Please send details to accounts@viewlegal.com.au*):

<table>
<thead>
<tr>
<th>Name on card</th>
<th>Card number</th>
<th>Expiry date</th>
<th>CCV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Card Type*</td>
<td>VISA</td>
<td>MasterCard</td>
<td></td>
</tr>
</tbody>
</table>

| Total amount to charge | $ |

---

**The Seven Key Aspects of Testamentary Trusts**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**The Five Foundations of SMSFs**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**Five Essential Estate Planning Articles**
- **$60.00**
- [ ] Ebook only

**Helpful Heuristics Handbook**
- **$35.00**
- [ ] Paperback  [ ] Ebook

**The Nine Steps to a Complete Estate Plan**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**The Nine Foundations of Asset Protection**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**The Dream Enabler**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**The Five Foundations of SMSFs**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**The Nine Foundations of Asset Protection**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**The Seven Key Aspects of Testamentary Trusts**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**The Nine Steps to a Complete Estate Plan**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**The Five Foundations of SMSFs**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**Five Essential Estate Planning Articles**
- **$60.00**
- [ ] Ebook only

**Helpful Heuristics Handbook**
- **$35.00**
- [ ] Paperback  [ ] Ebook

**The Nine Foundations of Asset Protection**
- **$60.00**
- [ ] Paperback  [ ] Ebook

**The Dream Enabler**
- **$60.00**
- [ ] Paperback  [ ] Ebook

---

**View Legal Pty Ltd ABN 39 168 702 707**

This receipt is treated as a Tax Invoice, GST included.

Please retain a copy for your tax records