

FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA

2017 *Professionals*  
**CONGRESS**

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## Estate planning – the transfer of wealth post July 2017

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23 November 2017





# Contents

Case study – what would we do ignoring 2016 Budget?

How does the 2016 Budget change estate planning?

Case study – what are our options now?



# Superannuation and estate planning

Super death benefit does not automatically go under a Will

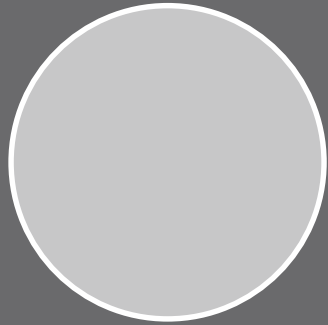
Trustee discretion (SIS Reg 6.22)

- “dependants”
  - spouse
  - children
  - financial dependants
  - interdependency relationship
- estate

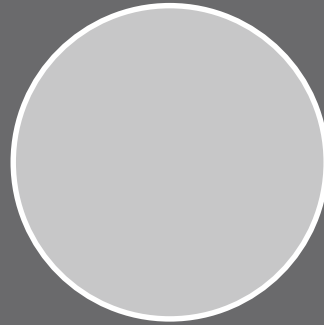
Trust Deed!



# Form of death benefit

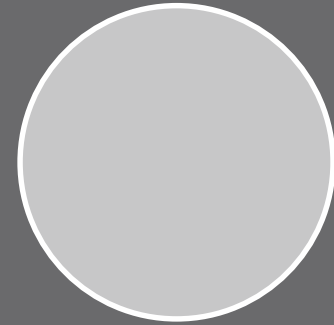


Lump sum



Pension

- Spouse
- Other dependant
- Children?



Limits on mixing  
for same  
beneficiary





# Death benefits

How does control of the trustee pass?

Who is the decision maker?

Will they exercise their discretion as we want them to?



# How do we 'lock-in' a benefit

Binding nomination

Reversionary pension

Specific deed provision

Separate SMSFs!



# If relying on trustee control

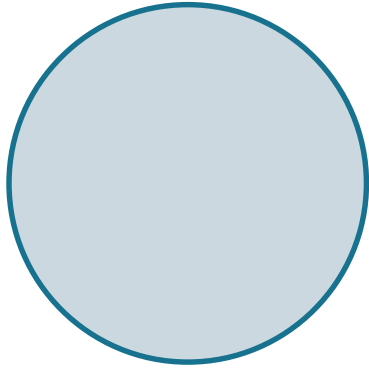
Consider how trustee/director is appointed

- Effect of section 17A
- Trust deed for trustees
  - Majority of members?
  - Who is a member?
- Constitution for companies
  - Majority of shareholders?
  - Director fill casual vacancy?
- Often need involvement of other member/trustee/director
- Change mechanisms to hardwire rules
- Automatic appointments – do they work?

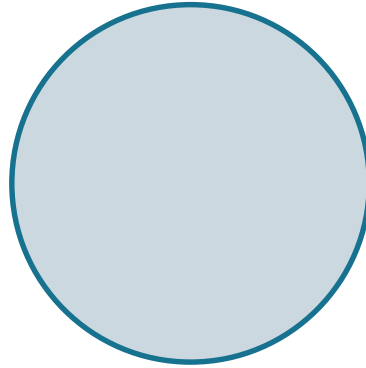




# Death benefits - guardian

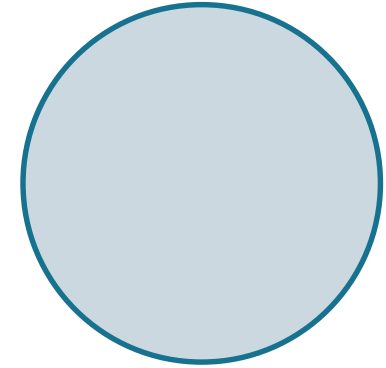


Where no  
reversionary  
beneficiary or BDBN



## Death Benefit Guardian:

- Appointed by member
- Power to direct death benefit
- Death benefit payment only with consent



Time gap! Who  
controls in the  
meantime?





# Case study – no 2016 Budget





# Transfer balance cap/account

New concept!

From 1 July 2017

Standard is \$1.6m, will be indexed \$100,000 increments

Effect is to limit amount in pension phase, and therefore the income which can be ECPI

The unused part of your transfer balance cap is indexed along with indexation of the general transfer balance cap



# This means...

Many clients will have both pension and accumulation accounts

- Planning must be reviewed to ensure we have dealt with accumulation account as well as pension

Some clients will remove funds from the superannuation system

- Other structures like family trusts become important
- Planning must be reviewed for new asset holdings

Evening up account balances between spouses becomes important again

- Consider for whom non-concessional contributions go in for
- Contributions splitting?
- Spouse contributions?



# Example

- Donald & Melania did estate planning 2012
- Donald had SMSF, funding account based pension
  - Wanted Melania to get it, so reversionary
- 2017
  - Donald's balance \$2m
  - \$400,000
    - Back to accumulation
    - Leaves super system – family trust?
  - Reversionary pension no longer enough by itself



# Death!

Death benefit as a pension is a credit to recipient's transfer balance account – value not transfer balance account amount

Even if deceased in pension phase and had own transfer balance account

At time of decision to pay the death benefit

## Choices

- Take it as recipient's transfer balance account
- Commute recipient's pension back to accumulation
- Take death benefit as lump sum



# Example

- Donald dies and the fund decides to pay Melania a death benefit pension
- The value of Donald's account gives rise to a credit in Melania's transfer balance account
- Donald's interest at death \$2m
  - Pension \$1.6m
  - Accumulation \$400,000
- Can pay \$1.6m pension to Melania – credit to her transfer balance account
- Rest leaves super system as lump sum



# Example

- Donald's interest at death \$2m
  - Pension \$1.6m
  - Accumulation \$400,000
- Melania has transfer balance account of \$1m already
- Can pay \$600,000 pension to Melania – credit to her transfer balance account
- Rest leaves super system as lump sum
  - Melania?
  - Estate – testamentary trusts useful?





# Example

- Melania could
  - Only take \$600,000 of Donald's death benefit as pension and rest as lump sum
  - Commute own pension and take all of Donald's benefit as a pension
- If commuting her own, can leave in accumulation phase in the super system
- Can't just leave part of Donald's in the super system
  - Compulsory cashing condition



# Example

	Melania pension	Donald death benefit pension	Melania accumulation	Outside super system
Leave Melania's pension in place and not take all Donald's death benefit as pension	\$1m	\$600,000 (amount of death benefit to keep Melania under transfer balance cap)	Nil	\$1,400,000
Commute Melania's, take all Donald's death benefit as pension	Nil	\$1,600,000	\$1,000,000 (was Melania's pension)	\$400,000 (part of Donald's over Melania's transfer balance cap)



# Example

- Donald dies and the fund decides to pay Melania a death benefit pension
- Both started pensions pre 1/7/17, so transfer balance account of \$1.6m
- If
  - The value of Donald's interest at death was \$2m
  - Melania already has a transfer balance account of \$1.6m, pension balance of \$2m
  - Melania has excess trf balance account (\$3.6m)
  - Even if Donald's trf balance account is \$1.6m



# Example

- Melania could
  - Take Donald's death benefit as lump sum (no room in his transfer balance cap)
  - Commute part of own pension, take same part of Donald's benefit as pension, rest as lump sum
  - Commute all of own pension and take all of Donald's benefit as a pension
- If commuting own, can leave in accumulation phase in the super system
- Can't just leave part of Donald's in super
  - Compulsory cashing condition



# Example

	Melania pension	Donald death benefit pension	Melania accumulation	Outside super system
Leave Melania's pension in place, take all Donald's death benefit as lump sum	\$2,000,000 (current value; transfer balance account only \$1.6m)	Nil (no space in Melania's transfer balance cap)	Nil	\$2,000,000 (all of Donald's account)
Commute \$1m of Melania's, take \$1m of Donald's death benefit as pension	\$1,000,000 (\$1m debit to Melania's transfer balance cap)	\$1,000,000 (\$1m credit to Melania's transfer balance cap so back to \$1.6m)	\$1,000,000 (part of Melania's pension commuted)	\$1,000,000 (part of Donald's account not taken as pension)
Commute all of Melania's, take all Donald's death benefit as pension	Nil (debit of \$2,000,000 so transfer balance cap is -\$400,000)	\$2,000,000 (whole value of Donald's interest, Melania's transfer balance cap becomes \$1.6m)	\$2,000,000 (all of what was Melania's interest)	Nil



# Reversionary pensions





# Example

- If Donald's pension automatically reverts to Melania
  - Melania's transfer balance credit does not arise for 12 months
  - But automatic at the end of 12 months
  - The value of Donald's interest at Donald's death
  - Melania has 12 months to take action
    - Commute part of own back to accumulation
    - Take some of Donald's as lump sum



# Child pensions

Can pay if

- Child under 18
- Child under 25 and dependant
- Disabled child

Commute at 25 unless disabled

Gives the child a special transfer balance cap

Per parent

Cap resets when pension ceases

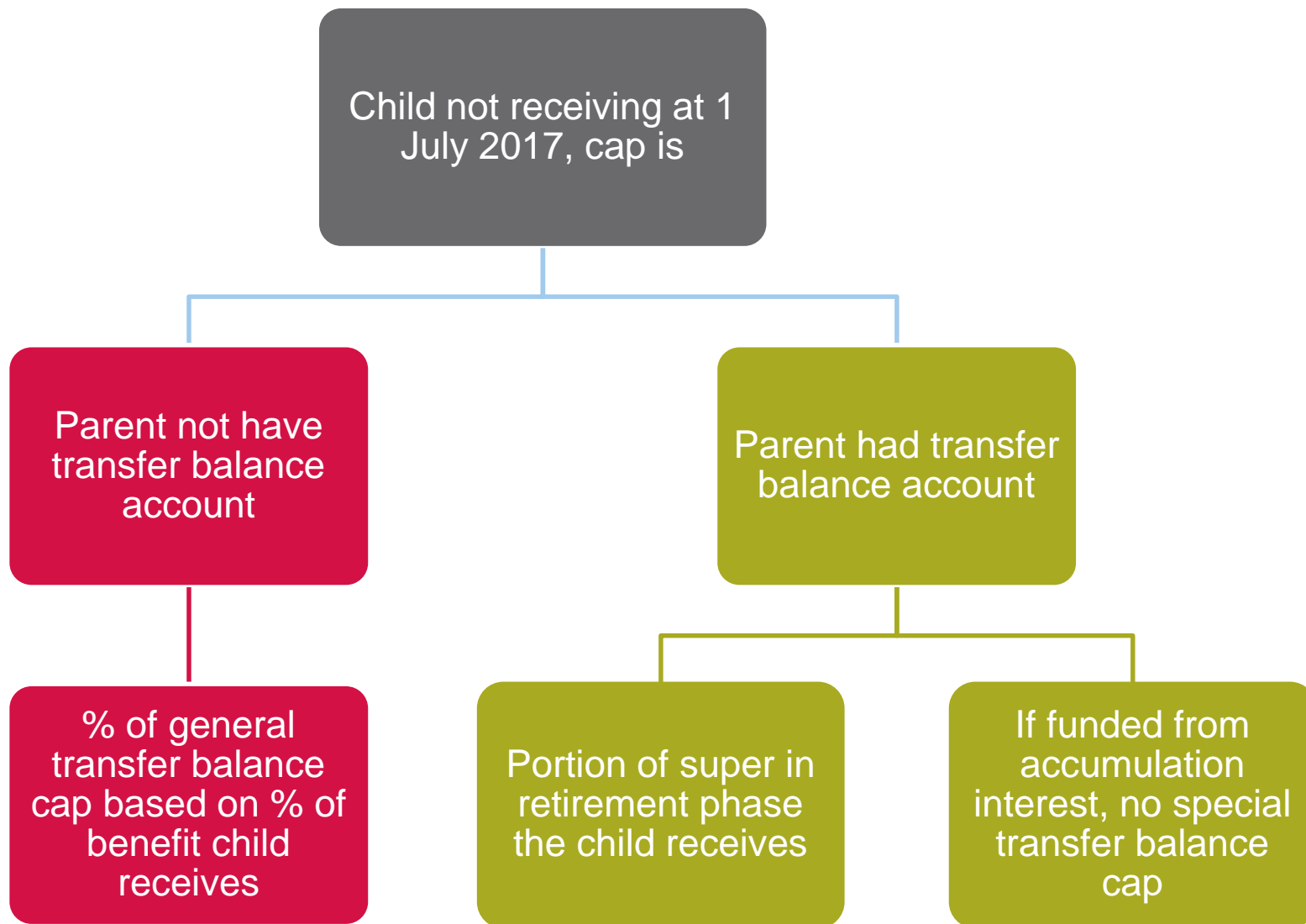
- 25
- Interest is exhausted

Child is receiving pension at 1 July 2017, general transfer balance cap





# Child pensions





# Example

- Donald dies 2 July 2017 with \$2m in accumulation
- Son Barron (11) gets all superannuation
- Barron gets \$2m and his transfer balance cap is \$1.6m
- \$400,000 excess must be lump sum
- If 2 children split 50/50, each receives \$1m, with a transfer balance cap of \$800,000
- \$200,000 each over the cap



# Example

- Donald dies 2 July 2017
  - \$1m in pension (goes to his son Barron)
  - \$500,000 accumulation (goes to his wife Melania)
- Barron's transfer balance cap is \$1m
- \$500,000 counts to Melania transfer balance cap if a pension
- If Barron received anything from the accumulation interest, gives rise to transfer balance cap for him under ordinary rules



# This means...

Must review  
estate  
planning  
arrangements

Clients who  
were just in  
pensions now  
have  
accumulation  
interests too,  
and maybe  
even funds  
outside the  
super  
system(!)

When 1 dies,  
are we over  
transfer  
balance cap  
combined?

Don't  
automatically  
make  
pensions  
reversionary  
or put BDBNs  
in place

Remember  
the power of  
trustee  
discretion and  
when to  
harness it

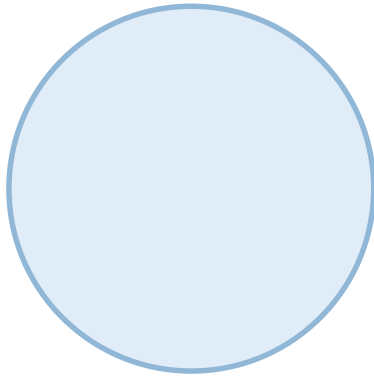


# This means...

- Consider
  - Take excess out of super now
  - When 1 dies, commute part of recipient's pension
  - When 1 dies, take part as lump sum
  - Is reversion still appropriate – buys some time
  - Child pensions where an option
- 'It depends'!

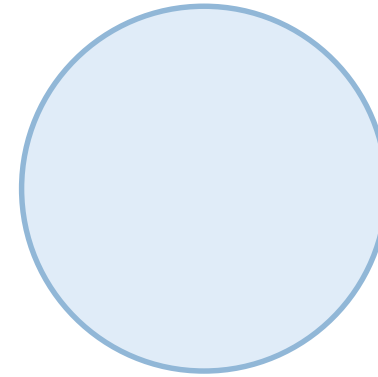


# Other estate planning considerations...



How do we leave assets to a surviving spouse?

- Direct to children/other dependants
- Testamentary trusts for spouse/children
  - Asset protection
  - Income splitting (particularly under 18)
  - Life interests
  - Limit control
  - Tax!



Will assets be held in a different form

- Family trust?
  - Pass on control
  - Trusteeship/shares in trustee company
  - Appointor roles
  - UPEs and debts





# Conclusion





# Q & A







# Thank you



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