




“The Blueprint for Superannuation Mastery from Super zero to Super Hero”

A Continuing Professional Development Session on
Australian Superannuation Law, Strategy, and Compliance

 Presented by
Tom Meagher
Director

Tom Meagher | Director



Tom has over 30 years' legal and business experience including:

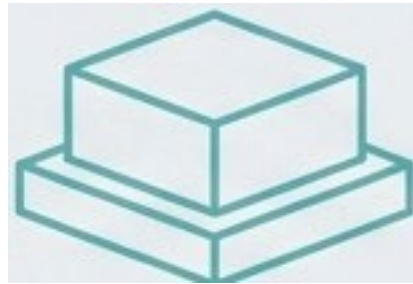
- ✓ Previously working for local law and major national firms
- ✓ Being the national operations manager for a financial advisory IT platform provider
- ✓ Previously being the WA Legal Technology Group Manager for a National Law Firm
- ✓ Owning and managing an IT consultancy business
- ✓ Being a director and in-house counsel for a public company



Tom is also a regular publisher of articles and is one of Australia’s leading presenters of legal seminars to and for various professional bodies, associations and government authorities on a wide range of business law and professional development-training topics including:

WA Department of Commerce	Institute of Public Accountants	CPA Australia
Chartered Accountants Australia & NZ (CAANZ)	Governance Institute of Australia	Mortgage & Finance Association of Australia (MFAA)
Law Society of WA	National Electrical & Communications Association (WA)	City Insolvency Discussion Group
Innovation Centre of WA	Australian Hotels Association (WA)	Forum for Directors of Indigenous Organisations (FIDO)
LegalWise CLE	Small Business Development Corporation	Stirling Business Centre
The Tax Institute	Australian Institute of Conveyances (WA)	Institute of Certified Bookkeepers
Western Suburbs Business Association	Business Foundations Inc	WA Business Assist
Strata Community Association of Australia	Real Estate Institute Western Australia (REIWA)	Australian Institute of Business Brokers (AIBB)

The Masterplan: A Structured Approach



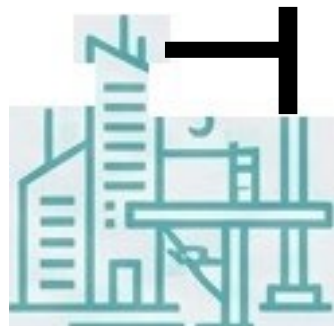
The Foundations

Understanding the history, purpose, and the legislative pillars of Australian superannuation.



The Core Components

Decoding the language, fund structures, and governance framework.



Advanced Blueprints

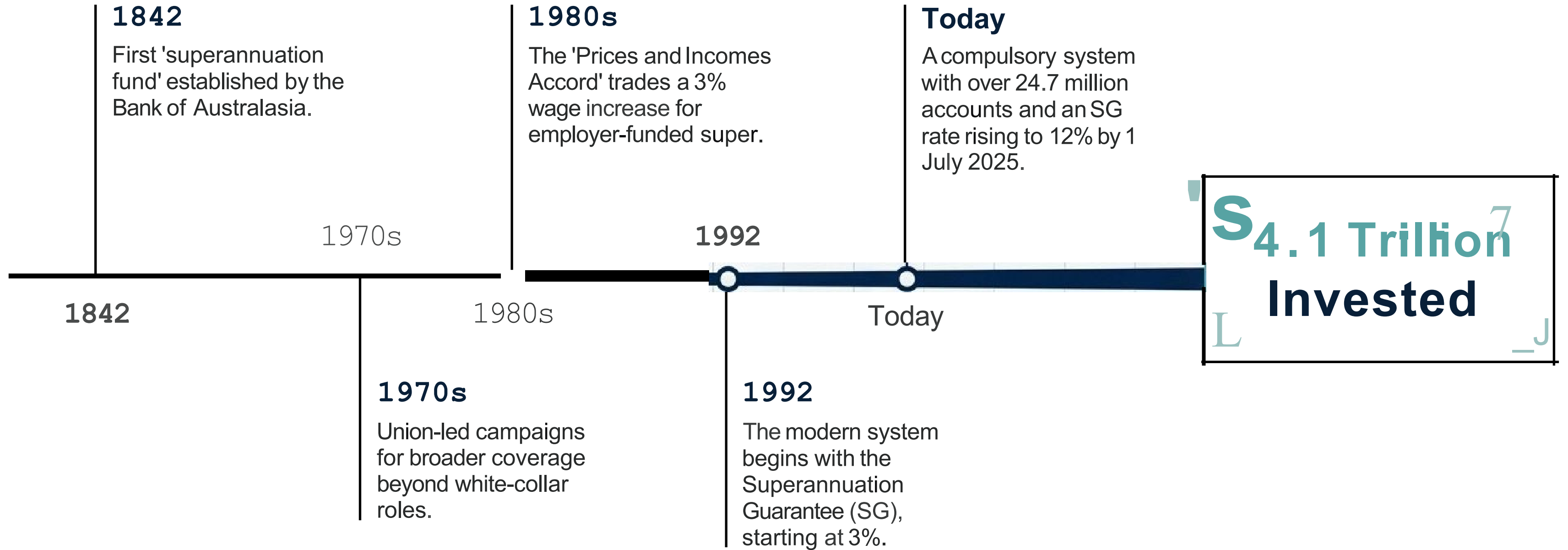
Mastering specialist strategies in estate planning and property investment within SMSFs.



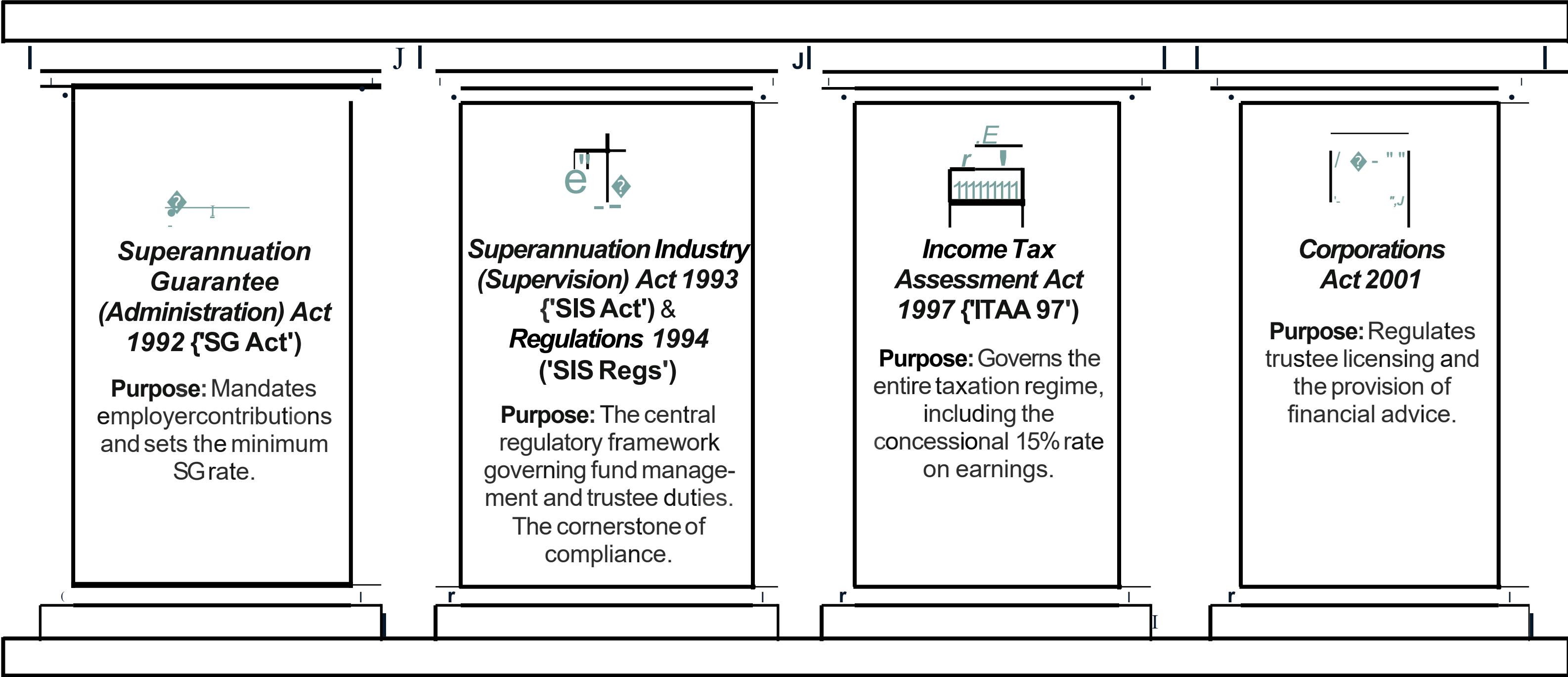
Practitioner Imperatives

Synthesising key takeaways and critical compliance actions.

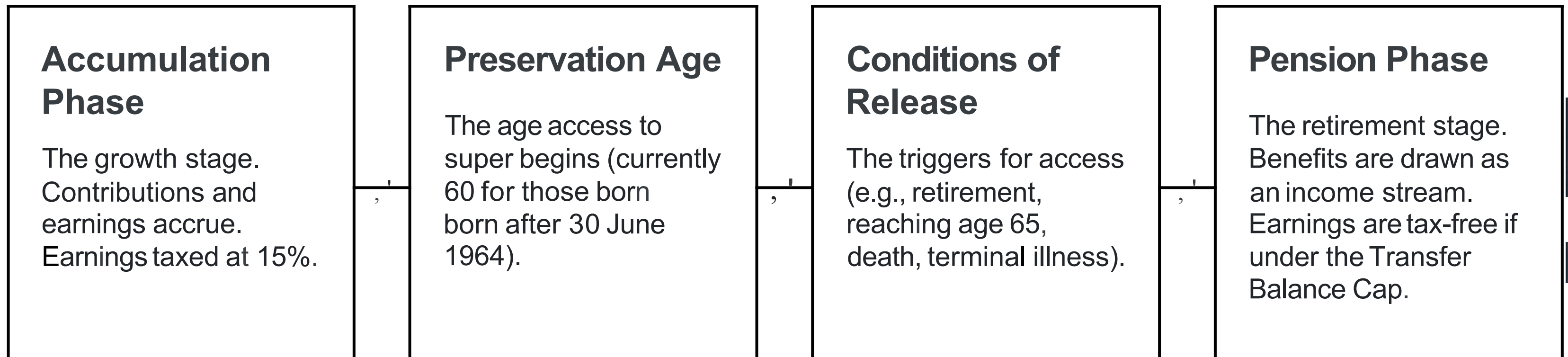
From Private Perk to a \$4.1 Trillion National Pillar



The Legislative Blueprint: Core Acts Governing Superannuation



Decoding the Language: The Member Lifecycle



Decoding the Language: The Financial Framework & Compliance Traps

Key Balances & Caps

Transfer Balance Cap (TBC)
Lifetime limit on funds moved into the tax-free pension phase (currently **\$1.9 million**).



Total Superannuation Balance (TSB)
Total value of super interests; governs contribution eligibility.



Concessional Cap
Pre-tax contribution limit (**\$30,000** for FY26).



Non-Concessional Cap
After-tax contribution limit (**\$120,000** p/a or **\$360,000** via 'bring-forward' rule).



Core Compliance Rules

Sole Purpose Test
Fund must be maintained *solely* for providing retirement benefits.



In-House Assets
Investments in related parties capped at **5%** of fund assets.



Critical Tax Traps

NALi/NALE
Non-Arm's Length Income/Expense. Income taxed at the top marginal rate (**45%**) if transactions are not at market rates.



Div 296 Tax
Proposed tax on earnings for member balances over **\$3 million** (legislation pending).



A Guide to Superannuation Fund Structures

Retail Funds

Public offer funds run by financial institutions (e.g., Westpac, Macquarie).

Regulator: APRA

Industry Funds

Profit-to-member funds, often with trade-based origins (e.g., Australian Super, Hesta, Cbus).

Regulator: APRA

Self-Managed Superannuation Funds (SMSF)

Private funds with fewer than 6 members, where members are also trustees.

Regulator: ATO

Wholesale/Master Trusts

Institutional platforms for high-net-worth individuals.

Note: These are rarely encountered and not covered in detail in this session.

The SMSF Deep Dive: Corporate Trustees and Governing Rules

The Trustee Imperative

- **Core Rule:** Every member must be a trustee OR a director of the corporate trustee.
- **Recommendation:** Always use a Special Purpose Vehicle (SPV) Corporate Trustee.

Why? Example #1 (Succession): On a member's death, the corporate entity persists. Legal title to assets does not need to change, avoiding costly administrative filings.

Why? Example #2 (Structure): A single-member fund is possible with a sole director corporate trustee, but not with a single individual trustee (minimum of two required).

The Primacy of the Deed

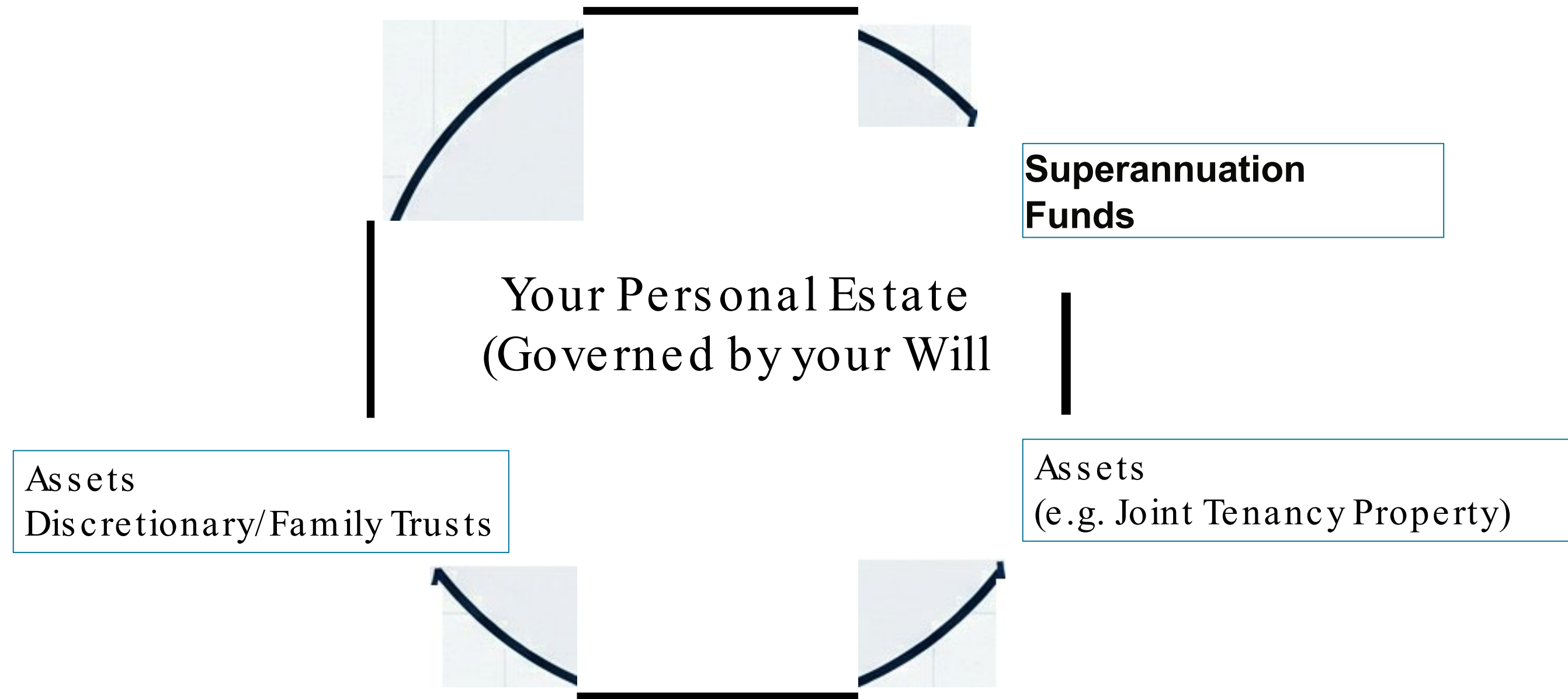
Headline: Your Governing Rules are Paramount.

The Trust Deed can impose stricter rules than the legislation. If the Deed prohibits a strategy (even if SISA allows it), the Deed wins.

Practitioner's Note

The High Court case of *Hill v Zuda* confirmed the Deed determines BDBN lapsing rules for SMSFs, overriding SIS Regulations. Regular deed updates are essential.

A Foundational Rule of Estate Planning



Superannuation death benefits do not automatically form part of your Will.

Implication: These assets require separate and specific planning instruments to ensure your wishes are met.

Directing Death Benefits: The Binding Death Benefit Nomination (BDBN)

Key Features

- A binding directive to trustees.
- Must be in writing and witnessed according to the Governing Rules.
- Can be non-lapsing in an SMSF if the Deed permits (*Hill v Zuda*).
APRA-regulated fund BDBNs typically lapse every 3 years.

Eligible Beneficiaries (SIS Dependants)

- Spouse (incl. de facto)
- Children (any age)
- Financial Dependants & Interdependency Relationships
- Legal Personal Representative (LPR) - the executor of the estate.

The Tax Distinction

- Benefits are tax-free to **Tax Dependants** (spouse, minor children).
- Tax of up to 32% may apply to non-Tax Dependants (e.g., adult, non-financially dependent children).

& Compliance Alert

Topic: Critical Drafting Error

Case: *Munro v Munro* [2015] QSC 61

Warning: Never nominate the 'Trustee of my estate'. The correct SISA term is 'Legal Personal Representative' (LPR). Using incorrect terminology will cause the nomination to fail.

Reversionary Pensions: Automatic Succession vs. BDBNs

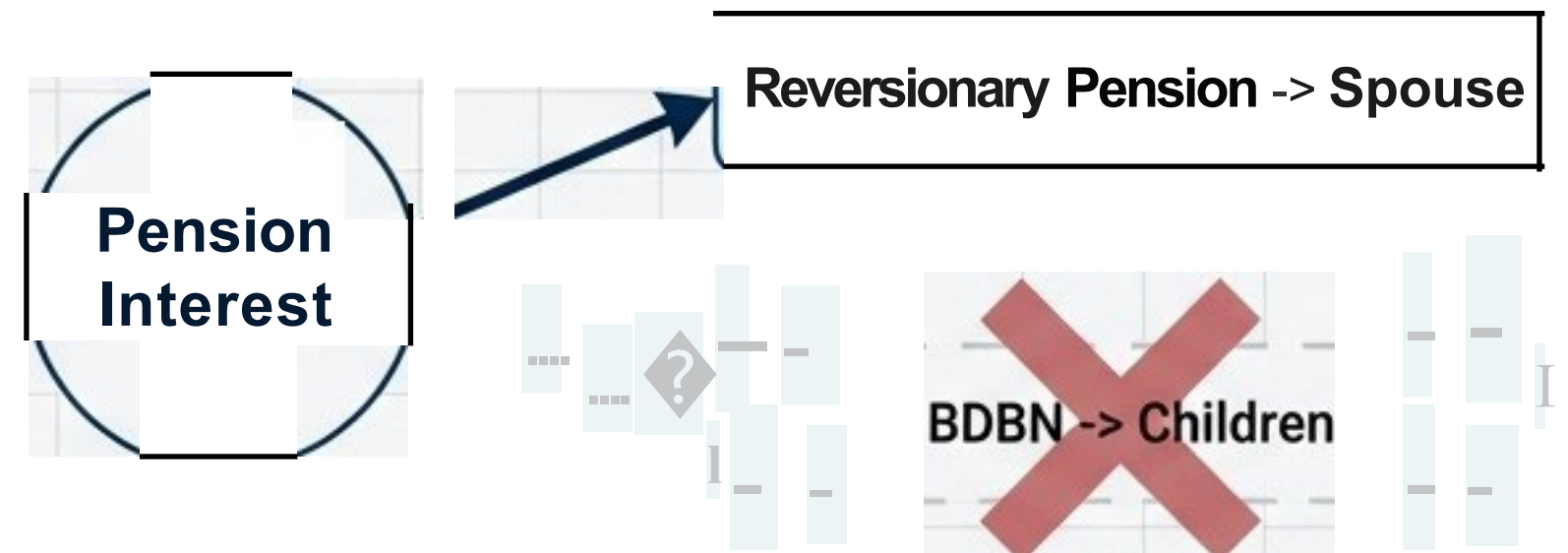
What is a Reversionary Pension?

- An income stream that automatically continues to a nominated beneficiary (usually a spouse) upon the member's death.
- Specified in the pension commencement documents.
- Bypasses the Will and potential challenges.

The Point of Conflict

What happens if a Reversionary Pension nominates a spouse, but the BDBN nominates the children?

The Rule: The Governing Rules of the fund determine priority. Typically, a valid Reversionary Pension will take precedence over a BDBN for that specific pension interest.



Practitioner's Note

Topic: Strategic Alignment

Best Practice: Ensure synchronisation. If a Reversionary Pension exists, the BDBN should either acknowledge it or be silent reent regarding that specific pension. Misalignment is a primary cause of disputes.

Advanced Blueprint: Using Business Real Property (BRP) in an SMSF

The Core Principle

- Generally, an SMSF cannot acquire assets from a related party (s66 SISA).

The Exception:

An SMSF can acquire Business Real Property (BRP) from a related party, either as a contribution or a purchase at market value.

What is BRP?

- Definition: Land and buildings used 'wholly and exclusively' in one or more businesses.
- Crucial Test: The 'wholly and exclusively' test is strict. A holiday home that also earns AirBNB income does not qualify.

The BRP Transfer Process - A Checklist

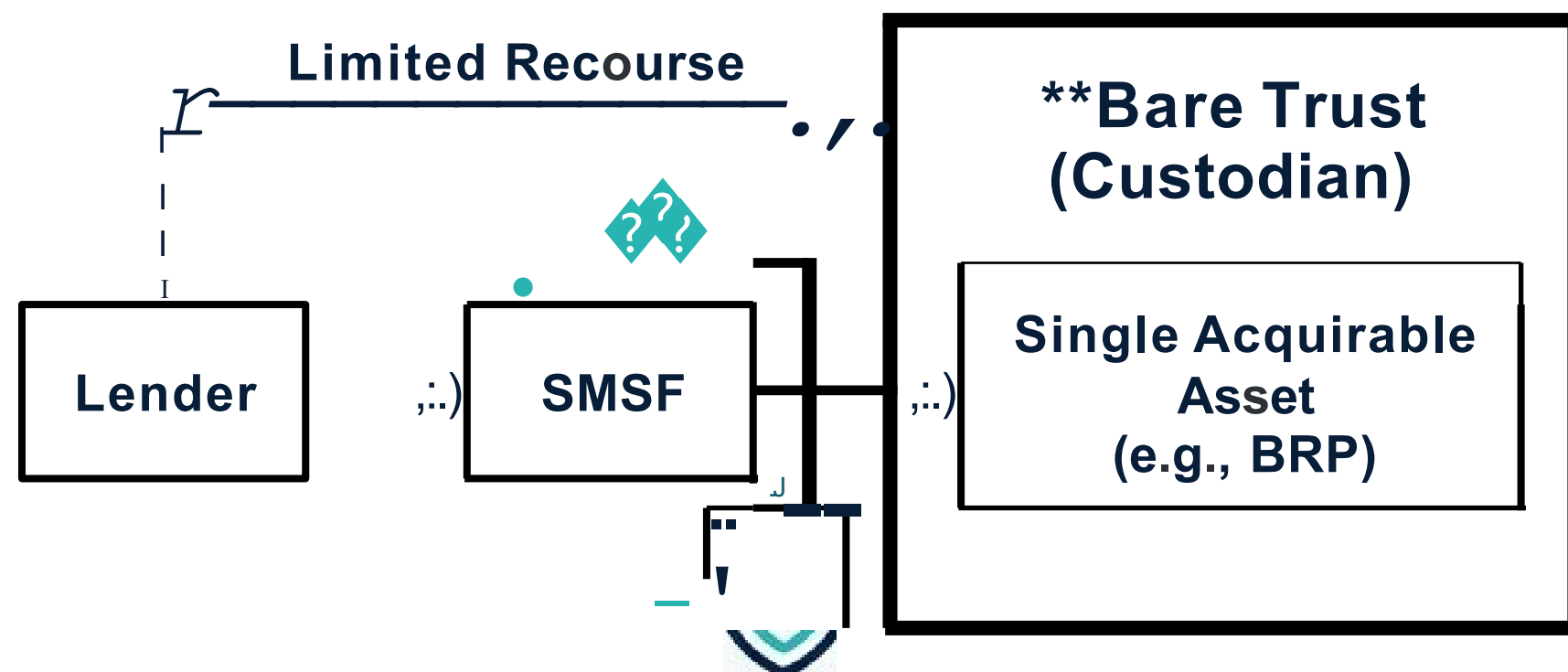
1. Licensed Financial Advice: A mandatory first step.
2. Independent Valuation: Required for ATO, CGT, and duties purposes.
3. Contribution Assessment: In-specie transfer counts towards contribution caps.
4. Deed & Investment Strategy Review: Ensure the fund's rules permit holding BRP.
5. Duties Assessment (WA): Seek nominal duty under s122 of the Duties Act 2008 (WA). Note the specific conditions.
6. Title Transfer: Register the transfer at Landgate.

Advanced Blueprint: Limited Recourse Borrowing Arrangements (LRBA)

The Challenge

SISA prohibits super funds from holding mortgaged assets directly.

The LRBA Structure



Compliance Alert: ATO Safe Harbour (PCG 2016/5)

Purpose: To avoid NALi (45% tax) on related-party loans, terms must be commercial. The ATO provides these 'safe harbour' terms:

- **Max LVR: 70%**
(Commercial/Residential)
- **Max Loan Term: 15 years**
- **Interest Rate: RBA Indicator Rate + 2%**
(for real property)
- **Security: Registered mortgage is required.**

The Exit Strategy: Vesting Property from an SMSF

Trigger 1: Member Death

- **Rule:** Benefits must be cashed 'as soon as practicable' (SISR Reg 6.21(a)).
- **ATO Guideline:** Typically expects this to be within six months, but legitimate delays (e.g., legal disputes, locating beneficiaries) are understood. Trustees must document reasons for any delay.

Trigger 2: Member Retirement

A member can take their benefits as an in-specie lump sum transfer of property after meeting a condition of release.

Practitioner's Note: The WA Duties Trap

Default Position: Unlike contributions *in*, transfers *out* of a super fund to a member in WA are generally subject to full *ad valorem* stamp duty.

The Exemption (s127 Duties Act 2008): Nominal duty may apply, but only if strict conditions are met:

1. Recipient was a member when the property was acquired by the fund.
2. Value transferred does not exceed the member's interest in the fund.
3. No consideration is paid for the transfer.

Key Imperatives for the Modern Practitioner

1



Imperative 1: Mandate Corporate Trustees: For all new and existing SMSFs to simplify administration, enhance succession, and mitigate penalty risks.

4



Imperative 4: Insist on Licensed Advice: The complexity of SISA and the tax acts demands that licensed financial and accounting advice is sought for all significant SMSF events.

2



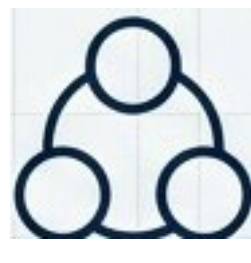
Imperative 2: Prioritise the Governing Rules: Regularly review and update Trust Deeds to align with current law and enable modern strategies like non-lapsing BDBNs.

5



Imperative 5: Master the Terminology: Understanding the precise definitions (e.g., LPR vs. Trustee, SIS Dependant vs. Tax Dependant) is not academic-it is essential for compliance and avoiding failed strategies.

3



Imperative 3: Synchronise Estate Plans: Ensure Wills, BDBNs, and Reversionary Pensions are fully aligned to prevent conflict and ensure member intentions are honoured.

Thank You

Top-tier quality legal work and business advice delivered directly by highly experienced, personable senior lawyers. Balfour Meagher's services include:

- ✓ Commercial Law
- ✓ Business and Equity Sales/M&As
- ✓ Estate & Business Succession Planning
- ✓ Property & Leasing Law
- ✓ Technology & Internet Law
- ✓ Property Development
- ✓ IP Commercialisation and Branding Protection
- ✓ Medical, Pharmacy and Allied Health Services
- ✓ Loans & Security Arrangements
- ✓ Conveyancing and Settlements