

STRATEGY TEXT AND GUIDELINES – LEADING MEMBER KIT

Upgrade of an SMSF to a Leading Member Structure with an existing Corporate Trustee

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3. Review Statement of Advice documents (general template text);
4. The construction or assistance of other advice document; and/or
5. Betterment of understanding of the Leading Member structure (multi-purpose).

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**UPGRADE YOUR EXISTING SELF-MANAGED SUPER FUND STRUCTURE TO A LEADING MEMBER STRUCTURE**

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A Leading Member SMSF has, at its core, a member who controls the Fund. They have the power to appoint and remove a Trustee plus the power to appoint and remove a member of the Fund. Like the English Windsor Royal Family, the ultimate bloodline protection structure, the Leading Member SMSF is designed to build and protect the superannuation wealth of the Leading Member’s lineage or bloodline.

This extends from limiting membership to lineage, paying death benefits if a member requires only to bloodline, removing members if their benefits are attacked by way of a legal action (including divorce), having veto power in the event of any Trustee decision making and much more. On the death, mental incapacity or retirement of a Leading Member, the successor Leading Member steps in to control the SMSF.

The Courts are littered with cases where members in a Fund are locked in a fight for control. Divorce, death and dementia are times when a Fund, generally a family SMSF need certainty, stability and security. A Leading Member SMSF aims to provide this.

**To implement this this strategy, you will be required to update both your existing SMSF Special Purpose Company and SMSF Trust Deed. Specifically, we recommend the following:**

* Determine that your existing SMSF Trust Deed allows the Trustee to vary the Deed.
* Upgrade your existing SMSF Special Purpose Company Constitution for <insert existing company name> to a SMSF Special Purpose Leading Member Company Constitution. This upgrade will incorporate:
	+ - 1. A special resolution by company members to change the constitution to a Special Purpose Leading Member Company Constitution.
			2. A unanimous decision by all members of the Fund adopt a constitution to ensure that control resides with the Leading Member of the Fund for which <insert existing company name> acts as Trustee.
			3. The execution of a new Leading Member Constitution for your existing Special Purpose Company, as noted in point (a)effective from <insert date of resolution>.
			4. The transfer of all existing shareholdings to the Leading Member or the cancellation of all shares with the exception of the Leading Member.
* Execute a Deed of Variation to vary the <insert SMSF name> into a Leading Member SMSF. This variation will incorporate:
	+ - 1. Adherence to rule <insert existing seed rule number> as defined in the existing Substituted Governing Rules of the <insert SMSF name>.
			2. The appointment of a Leading Member. Specifically, <insert leading member 1 name> is to be appointed as the first leading member.
			3. <if applicable> The appointment of a Second Leading Member. Specifically, <insert leading member 2 name> is to be appointed as the second leading member.
			4. <if applicable> The appointment of a Third Leading Member. Specifically, <insert leading member 3 name> is to be appointed as the third leading member.
			5. The execution of a new trust deed and replacement of governing rules for <insert SMSF name> effective from <insert new deed date>.

Once all of the above has been implemented, the Leading Member/s control the Trusteeship of the Fund as well as who the members of the Fund are (generally lineal) and what happens in the event of divorce, dementia or bankruptcy.  The Leading Member has the power to deem a person, such as their spouse, as lineal.

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| Benefits of the Leading Member SMSF Structure | **Control of membership*** The most successful SMSFs hold the next generation as members of the Fund. When the senior members of the SMSF become mentally incapacitated, the next generation has the power to step up as Leading Member and control the fund as well as looking after the senior Members of the Fund.
* Traditional SMSFs don’t allow or enable this passing of control.
* Likewise, many senior members of a family resist younger family members coming into the Fund for fear of losing control. This is not the case with the Leading Member SMSF.

**Control of estate planning*** The passing of death benefits from a superannuation fund often goes to the deceased member’s estate which raises a problem of legal challenges under various State succession laws. The best method of passing death benefits without legal challenge is directly from a SMSF by way of lump sum or pension, depending on legal availability. With a Leading Member SMSF the benefit is the set of tools and resources enabling members to limit access to their superannuation benefits on their death to their lineage only.

**Control of Member Incapacity*** Ideally if a member becomes incapacitated, either physically or mentally, the Trustee of the Fund (by way of the Leading Member) will put in place a plan to look after the member using their superannuation benefits and in some cases the resources of the Fund.
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| Risks or consequences of the Leading Member Structure | **The Leading Member controls*** Ultimately the Leading Member controls the Fund and all members are subject to appointment and removal by the Leading Member. Of course, the superannuation and trustee laws require that the Leading Member must act on behalf of all members. However, where the member may be subject to a legal dispute or a family law action, which may jeopardise the Fund, the Leading Member has the power to determine the current value of the Member’s benefits and pay these out on termination.

**Knowing the Leading Member*** Before joining a Leading Member SMSF a prospective member should discuss with the Leading Member their rights and entitlements and be comfortable with how the Leading Member is to run the fund.
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| Alternative strategies | * Retain your existing SMSF stricture however this does not limit Trustees and Members to lineal descendants via the use of a Leading Member.
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| Other considerations | * The replacement of the Substituted Governing Rules, with the Replacement Governing Rules, does not constitute a resettlement of the Fund at law, equity or under any Superannuation Law.
* To provide absolute certainty a member may want to complete a set of Binding Incapacity Benefit Directions which provides a set of binding directions on the Trustee as to how an incapacitated member’s benefits are best to be deployed.
* The Substituted Governing Rules of the Fund are replaced in their entirety with the Replacement Governing Rules for the new Leading Member SMSF structure, pursuant to Rule <insert existing variation rule number> of the Substituted Governing Rules.
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