

Leading Member Discretionary Trust - All You Need to Know

1. What is a Discretionary Trust?

A discretionary trust enables the Trustee of the Trust to:

1. Distribute capital to a range of beneficiaries (a person receiving a capital payment or asset of the trust);
2. Distribute income to beneficiaries, including streaming specific types of income such as dividends, capital gains, interest and foreign income; and
3. Conduct business and other operations, including investment for the benefit of the beneficiaries of the Trust.

In short, the Trustee has a wide range of discretion, which it exercises generally each year, no later than 30 June, so that the Trustee is not taxed on the trust's income at 45%. By streaming income and specific types of income enables the Trustee to spread the income around, ensuring that the tax liability is spread across the family, thereby lowering overall family average tax rates. Plus, having assets in a Trust protects them from beneficiary and trustee creditors.

2. If the Trustee is so Powerful, who controls the Trustee?

In a typical, off-the-shelf trust deed, a person or company named as the Appointor has the power to appoint and remove the Trustee. This may include themselves. In essence, they control the Trust from behind the veil of the Trustee.

However, there are limitations in this structure:

1. What happens if the Appointor dies or loses mental capacity? In this instance, the power shifts to the Trustee, which may be different from what is desired for family or financial reasons.
2. What happens if the Appointor goes bankrupt? This may limit their capacity to act financially and potentially put the Discretionary Trust under attack.

Succession is the weakest link of many discretionary and family trusts in Australia.

3. A Leading Member Family Trust – the Better Way

A Leading Member Family Trust focuses on the key role of Appointors and also the Trustee of the Fund. Think, if you will, of all the Trusts that the King Charles of England has, and there are many. If something happens to him, such as death or disability, there can be no indecision, no

insecurity and no uncertainty. If something happens to The King, the Leading Membership of the Trusts passes to the next in line for the Crown – currently Prince William, then Prince George.

With a Leading Member Discretionary Trust, once the first Leading Member Appointor is appointed, the Leading Member:

- Controls who can be the Trustee, including the appointment and removal of the Trustee;
- Can veto many of the decisions of the Trustee, much the same as The King has the power to veto decisions of the English Parliament;
- Can determine when the Trust is to be wound up and also, through their veto power, which beneficiaries are to benefit from the Trust and in what case;
- Importantly, limit the beneficiaries to the lineage of the Leading Member or those persons or entities at the discretion of the Leading Member.

4. Leading Member Succession – the Royal Key

The succession of the monarchy in England and many other countries with a monarchy is well settled. Likewise, the Leading Member Family Trust provides for a pre-determined succession plan going down one, two, or more generations. It is important to make this decision upfront, as the family's wealth and control are in the hands of the Leading Member.


In planning for a Leading Member Family Trust to protect all the family's wealth in the Trust, the only question that needs to be asked is: Who is the next Leading Member? Who then? Who then? Who then?

5. The How To?

If you already have a Discretionary Trust, it must be carefully upgraded to ensure that the benefits of Leading Membership are embedded in the Trust and that a new Trust is not created. (This would result in the closure of the old Trust and potential capital gains tax and stamp duty issues with the transfer of existing assets of the Trust shifted to the new Trust.) We can undertake this process for your Trust through our specialist Leading Member legal firm.

If it is a new Leading Member Trust, then there are several essential tasks to be completed by us:

1. Determine the Leading Member and successive Leading Member;
2. Determine who is the Trustee – this is the Leading Members decision and generally is a company;
3. Place any limitations on who can be a beneficiary, such as only the “lineage of any Leading Member or the former Leading Member.”
4. Determine who is the settlor of the Trust – a task we will do for you as the Settlor contributes \$10 to set up the Trust at law but has no further active control and is prevented from being a Trustee, Leading Member or beneficiary;
5. Draft up a Trust Deed that meets these requirements and provides for tight control by the Leading Member

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6. Execute the Leading Member Trust Deed;
 7. Apply for an Australian Business Number and Tax File Number;
 8. Set up a bank account for the Trust;
 9. Guide you into becoming a Trustee and investing the Trust's money or running a business.

6. Links with a Leading Member SMSF

A Leading Member self-managed superannuation fund is similar to the Leading Member Family Trust, and we can help you transition an SMSF to a Leading Member SMSF. Here is a tip: The same Leading Member of the Family Trust could be the Leading Member of the SMSF.