



# The Super Sleuth

Cutcher's Clues to Superannuation

DETECTION • ANALYSIS • SOLUTIONS

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## STOP PRESS!

### Introducing Cutcher & Neale Superannuation Technical Services

***We are licensed! Is your adviser?***

The Government has introduced widespread reforms to the licensing of all persons providing advice on financial services, including Self Managed Superannuation Funds or "SMSFs".

With application from 11 March 2004, SMSFs were caught by the reforms under the Corporations Act section 911A that require **all persons to be licensed** when providing detailed **advice in relation to SMSFs**.

This includes accountants, financial planners, lawyers and administrators. The penalty for breaching section 911A is a maximum \$22,000 fine and/or two years imprisonment.

**Accountants are now required to be licensed** to give advice in many areas, including:

- Rolling over existing benefits in another superannuation fund to a SMSF
- Becoming a member of a fund
- Creating an estate plan
- Commencing a retirement income stream
- Making contributions to a SMSF
- Taking a lump sum
- Paying out death benefits from a SMSF

Accountants in practice can no longer provide incidental advice without holding an Australian Financial Services (AFS) licence or being an Authorised Representative of a licensee.



**Cutcher & Neale**  
CHARTERED ACCOUNTANTS

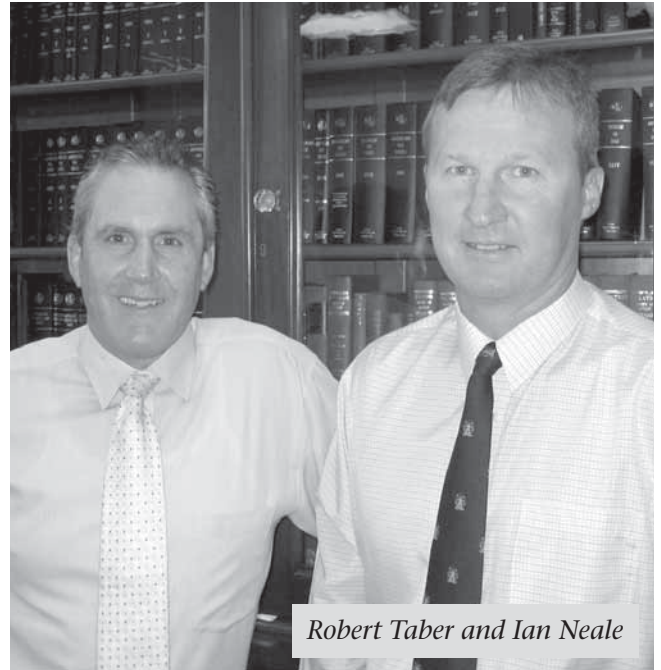


### – Introducing Cutcher & Neale Superannuation Technical Services (cont'd)

In response to this and to enhance the range of services provided by Cutcher & Neale Chartered Accountants we have established a specialist company – **Cutcher & Neale Superannuation Technical Services**.

The new entity is headed by Robert Taber and Ian Neale as Authorised Representatives of Lonsdale Financial Group Limited and is licensed to provide strategic and structural advice with respect to SMSFs. Bob and Ian have no restrictions on the advice that they can provide to clients with respect to SMSFs and are also required to undertake regular training in SMSFs.

Investment advice and consulting will continue to be provided by Phil Smith and Ryan Ansell of Cutcher & Neale Investment Services Pty Limited.



*Robert Taber and Ian Neale*

### Where Are Your Entitlements Going? — Binding Death Benefit Nominations

Have you implemented an **effective estate plan** around your wants and needs?

Binding Death Benefit Nominations are vital for members of a superannuation fund to allow superannuation entitlements to be paid to the beneficiary of choice upon death, provided that the nominated beneficiary is a dependent or has an interdependent relationship with the member.

Should a Death Benefit Nomination be non-binding or not executed correctly, members run the risk of having their entitlements paid to beneficiaries they do not want or leave an avenue for a challenge under the Family Provisions Act.

### Opportunity

#### – Holiday House Exempt from CGT!

Electing a holiday house to be your main residence at the date of death may have advantages.

Under the Income Tax Assessment Act 1997, if the dwelling was the main residence and was not being used to produce assessable income at date of death, earlier periods when it was not the main residence or when it was being used to produce assessable income are disregarded.

### Contributions Splitting

#### – Watch This Space!

Legislation is still pending in relation to the splitting of superannuation contributions between spouses. These rules are forecast to come into effect from 1 July 2005.

If introduced, it will be possible to allocate up to 60% of taxable contributions.

The ability to split contributions with your spouse will have an **extraordinary impact on the taxation of your superannuation benefits**, effectively allowing you to have two Reasonable Benefits Limits (RBL).



## Defined Benefit Pensions – Act Now!

Time is running out to take advantage of the Regulations gazetted on 12 May 2004 that restrict the use of defined benefit pensions by SMSFs.

### What are the advantages of defined benefit pensions?

- Management of Reasonable Benefit Limits
- Flexibility with respect to term of pension
- Considerable estate planning opportunities

A SMSF, until 30 June 2005, may still provide a defined benefit pension to a person who was a member of the fund on 11 May 2004, and:

- retires from the workforce on or after age 55
- ceases an arrangement of gainful employment on or after age 60 or
- attains age 65.

### All Is Not Lost!

Allocated and market linked (complying) pensions still remain as effective retirement income streams post 1 July 2005.

## Part Time Work, Part Time Retirement?

The Treasury has released regulations that implement the government's transition to retirement measure.

From 1 July 2005, these regulations will allow a person who has reached their preservation age to **access their superannuation** through an income stream without having to retire permanently from the workforce.

In designing the regulations, the government aims to provide maximum flexibility while minimising complexity.

This includes:

- no work test
- no cap on the amount of benefits a person can access
- allowing individuals to use existing pension products (e.g. allocated pensions or market linked pensions)
- allowing people who purchased an allocated pension to stop (or commute) their income stream and return the benefits to their super fund. This would benefit people who choose to return to full time work.

Under the policy, allocated pensions cannot be commuted and cashed out as a lump sum while a person is still working. However, once a person retires or reaches age 65, they will have the option to commute the allocated pension and access their full benefits.

## Estate Planning – Leave It To The Kids!

What are some of the most effective ways to transfer your wealth to your children?

### Testamentary Discretionary Trust or Child Allocated Pension?

Both strategies provide a tax effective way to transfer superannuation capital and income to children but often with very different levels of asset protection, control and income flexibility.

#### Testamentary Trust

A trust that has been created under a Will.

##### Advantages

- Children under 18 that normally have a tax free threshold of \$416 are taxed as adults.
- The trustee of the trust has power to vary distributions of income and capital to beneficiaries.

#### Child Allocated Pension

Lump sum death benefit paid to the children converted into an allocated pension.

##### Advantages

- Pension payments do not incur penalty tax rates for children under 18.
- It may also provide protection from a spendthrift child who may squander a lump sum death benefit.





### Battle of the Trustees

#### – Corporate v Individuals

**Does your superannuation fund have a corporate trustee?** Cutcher & Neale have implemented a new policy, adopting corporate trustees to all SMSFs.

**The benefits of a corporate trustee include:**

- There is a requirement to report to the ATO when the superannuation fund assets are not held in the name of current trustees. This can be simplified by appointing a corporate trustee.
- When an individual trustee is to be removed, e.g. upon death, a **deed amendment** is required together with changing names on all investments and appointing a new trustee. A corporate trustee removes this requirement as the only change would be to resign the member as a director of the company.
- **Property** can only be recorded in the name of the Trustees not the Fund. When there is a change in individual trustees, the Land Titles Office must be notified. A change in directors of a corporate trustee does not need to be reported to the Land Titles Office.
- A corporate trustee can **issue shares** in its company. Therefore control over voting can be made in accordance with percentage of member balances.
- **Retirement planning strategies** may be restricted if individuals are trustees.

### Beware – ATO Crackdown on Trustees

The ATO have announced they will be undertaking a more active role in monitoring the compliance of SMSFs by increasing their audit activity.

As a result, the following issues have been identified as the most common errors made by trustees:

- Running a business within the superannuation fund
- Assets in the superannuation fund being used personally or by related parties
- Records not being kept for 5 years relating to accounting records and 10 years for all other records
- Lending money from the superannuation fund to provide financial assistance to members or relatives
- Mixing the money held in the superannuation fund with personal or business funds
- All assets not being held in the name of the Trustees
- In-house assets exceeds 5% of the superannuation funds total assets
- Paying benefits to members without meeting a condition of release
- Using the superannuation funds assets as security or borrowing money in the fund

### Residency... Did You Know?

A superannuation fund must be a resident of Australia for the entire financial year to remain a complying superannuation fund and be eligible for tax concessions. When Trustees of a SMSF are seconded to work temporarily overseas this may cause a problem.

However, as a result of amendments made to the definition of resident superannuation funds, temporary absences of Trustees from Australia for a period **which does not exceed two years** will not be taken into account in determining the residency status of the fund. If a fund is faced with losing its residency, it should consider appointing an approved trustee or making alternative arrangements before the trustee departs Australia, so as to continue to receive tax concessions.

If a member of the fund becomes a non-resident of Australia in a year, in order to protect the fund's eligibility for tax concessions, the trustees should check whether or not to accept contributions on behalf of that member.

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