

NSW Tax Forum

22–23 May 2025

Sofitel Sydney Wentworth



Family Trust Elections – ATO insights and what advisers/trustees need to be aware of

Presenters:

Amy James-Velagic, Australian Taxation Office
Karen Rooke, CTA, Australian Taxation Office

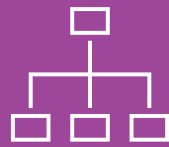
ATO observations



Lack of
governance



Lack of
understanding



Structuring



Succession
planning



Advisers



Lag between
making
elections &
discovery of
FTDT issues



Complexity of
legislation

Why make a Family Trust Election (FTE)?

Concessions

Trust loss
Measures

Company loss
tracing
concessions

Holding period
rules

Trustee
beneficiary
reporting rules

Small business
restructure
roll-over

Family trust distribution tax

All legislative references are to Schedule 2F to the ITAA 1936 (unless otherwise stated)

Trust makes a
family trust
election (FTE)

Section 272-80

Entity makes an
interposed entity
election (IEE)

Section 272-85

Trustee or entity makes a
distribution outside
the family group

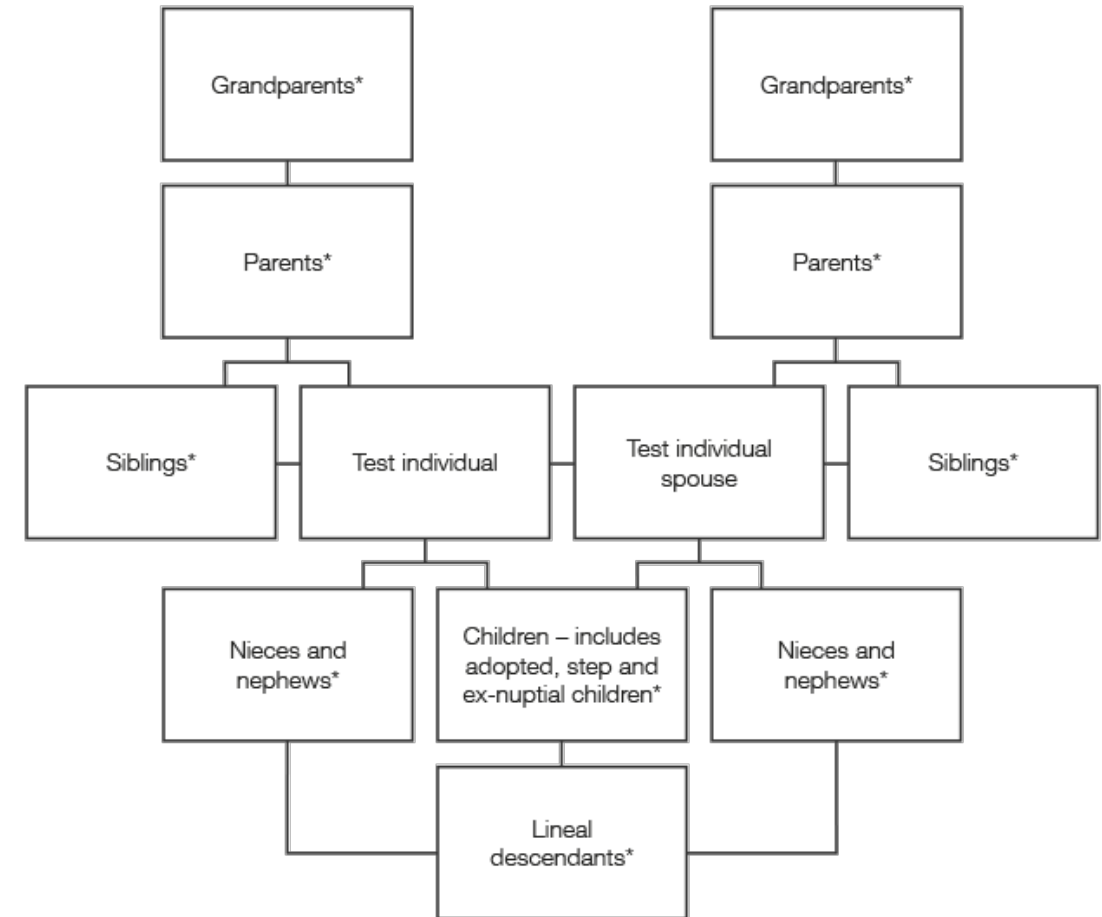
Sections 271-15 to 271-30

Family group is narrowly defined

The family group of *an individual* specified in the FTE includes:

- members of the individual's family
- a trust that has made an FTE specifying *the* individual;
- a company/partnership/trust that has made an IEE specifying *the* individual;
- A company/partnership/trust whereby *the* individual, members of *the* individual's family and trustees of family trusts have fixed entitlements, directly or indirectly, and for their own benefit, to all of the income and capital.

(See section 272-90)



* All spouses of these family members

Distribution has an extended meaning

Trust
distributions

Section 272-45

Partnership
distributions

Section 272-55

Dividends

Section 272-50

Capital
distributions

Sections 272-45 to 272-60

Payments of
money

Sections 272-45 to 272-60

Loans

Section 272-60

Transfers/ use
of property

Section 272-60

Forgiveness
or waiver of
debt

Section 272-60

What happens if FTDT applies?

Trustee/entity
liable to pay

Sections 271-15 to 271-30

Imposed
automatically
at 47%

FTDT Act 1998, sections 3 to 4

Due and payable
21 days after
distribution

Section 271-75

GIC accrues if
not paid 60 days
after due date

Section 271-80

Statutory
obligation to
pursue recovery

PGPA Rule 2014, section 11

NANE after
FTDT paid

Section 271-105

FTDT Case Study: Once upon a time an FTE was made

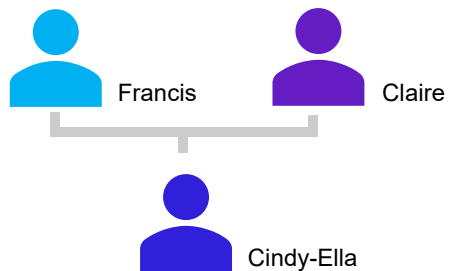
Disclaimer: We have made assumptions in our calculations of FTDT and GIC. These are for indicative purposes only and should not be relied upon.

The beginning...once a upon a time

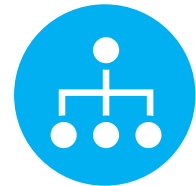
A simple family business and trust

 1997

Family Group



Structure



The Francis Trust



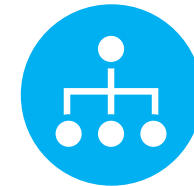
The first FTE was made...

 1999



Relevant provisions: 272-80

Structure



The Francis Trust

FTE Specified Individual (SI) **Francis**
Specified year 1999



The business expands... FTDT issues surface

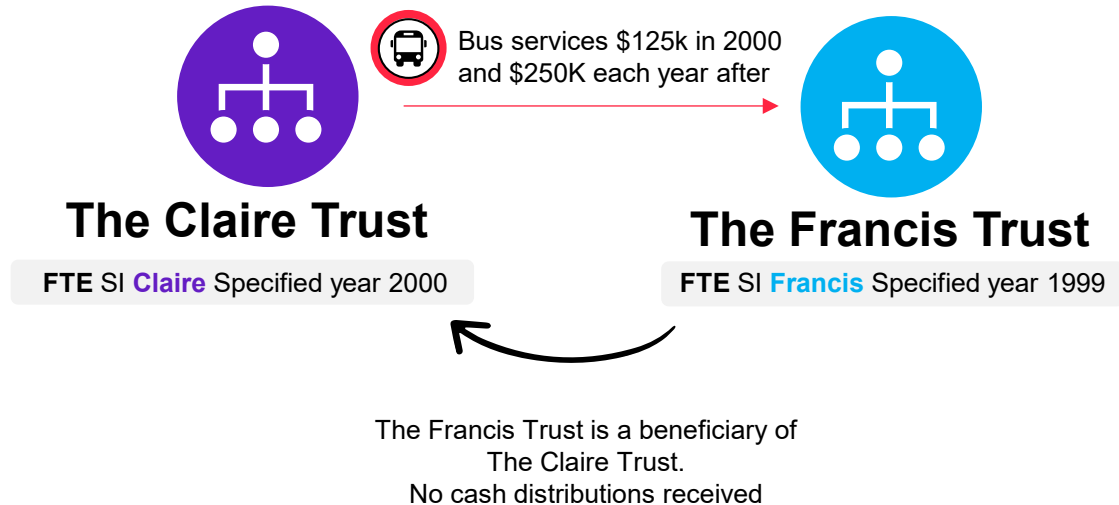
Structure



2000



Relevant provisions: 272-80,
272-60(1)(b), 271-15



FTDT Events

	YTD FTDT	\$60,625	YTD GIC	\$0
	Total FTDT	\$60,625	Total GIC	\$0

The business continues to do well and grow...

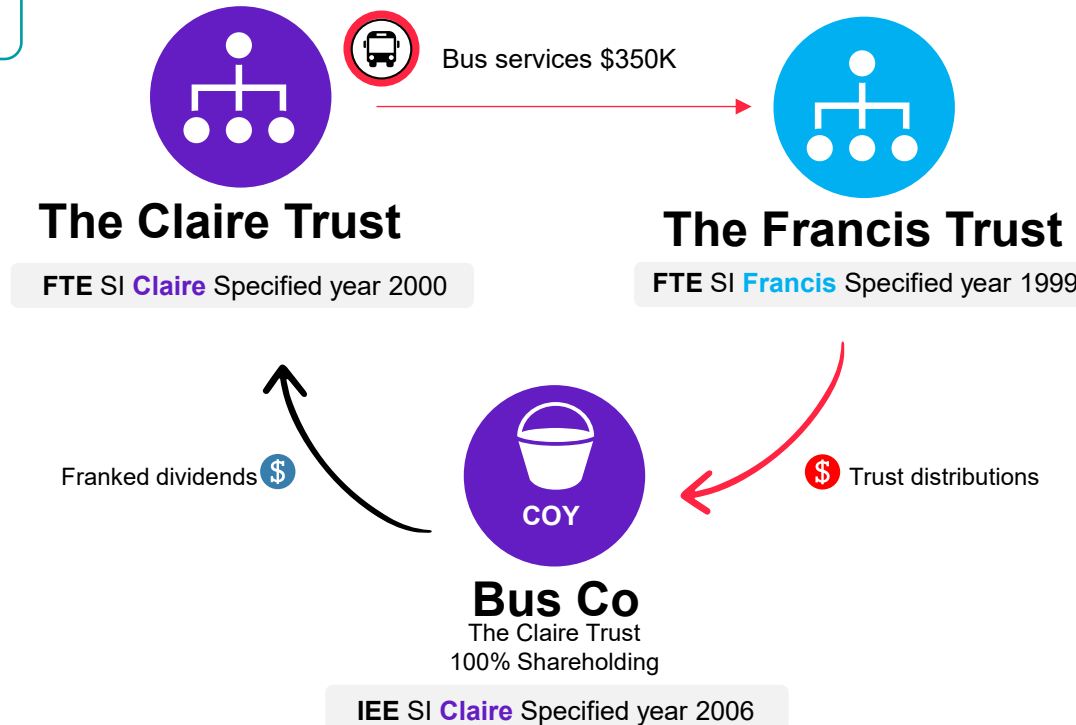
Structure



2006



Relevant provisions: 272-85, 272-80, 271-15, 207-145 ITAA 1997



FTDT Events

	YTD FTDT	\$654,750	YTD GIC	\$120,332
	Total FTDT	\$1,200,375	Total GIC	\$347,090

The business expands ... additional entity and election is made

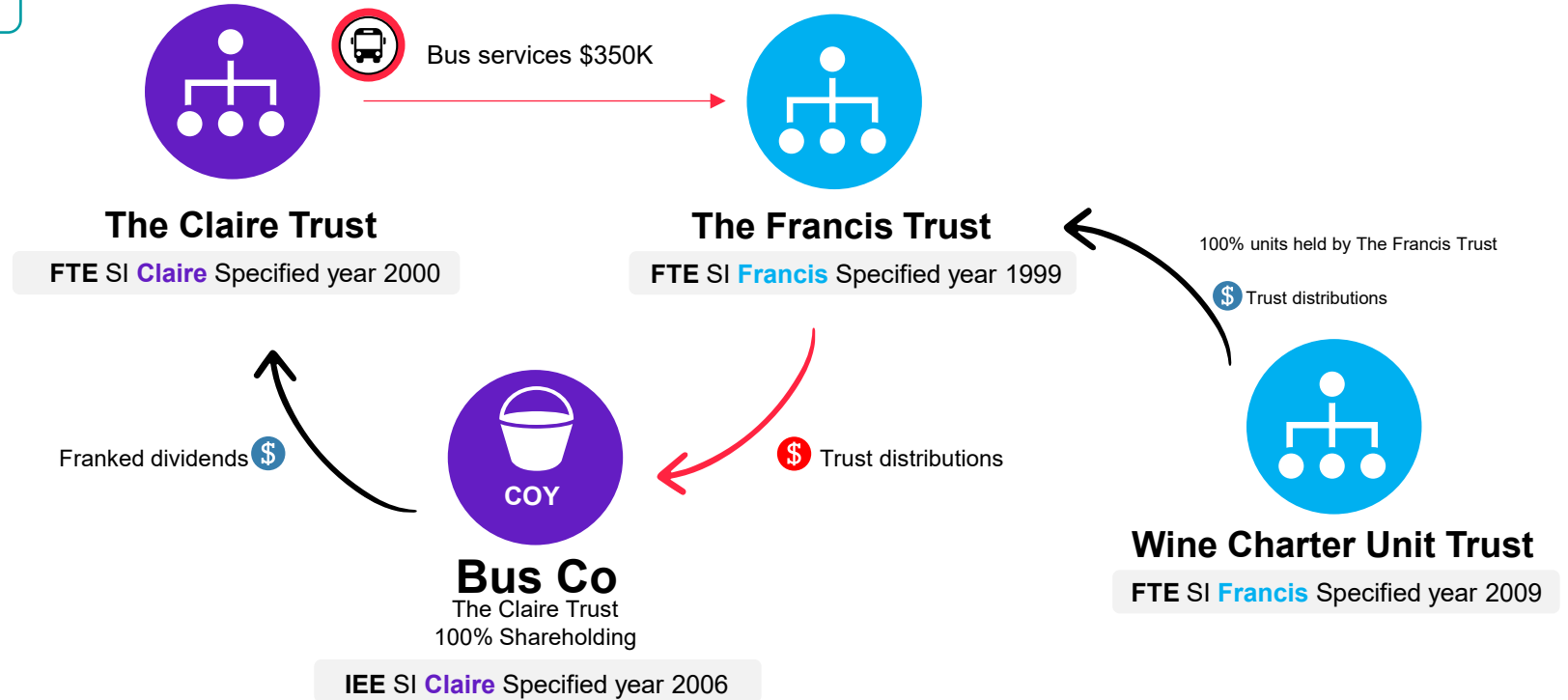
Structure



2009



Relevant provisions: 272-80, 271-15



FTDT Events

	YTD FTDT	\$860,250	YTD GIC	\$478,412
	Total FTDT	\$3,316,125	Total GIC	\$1,423,776

The compounding FTDT issues continue

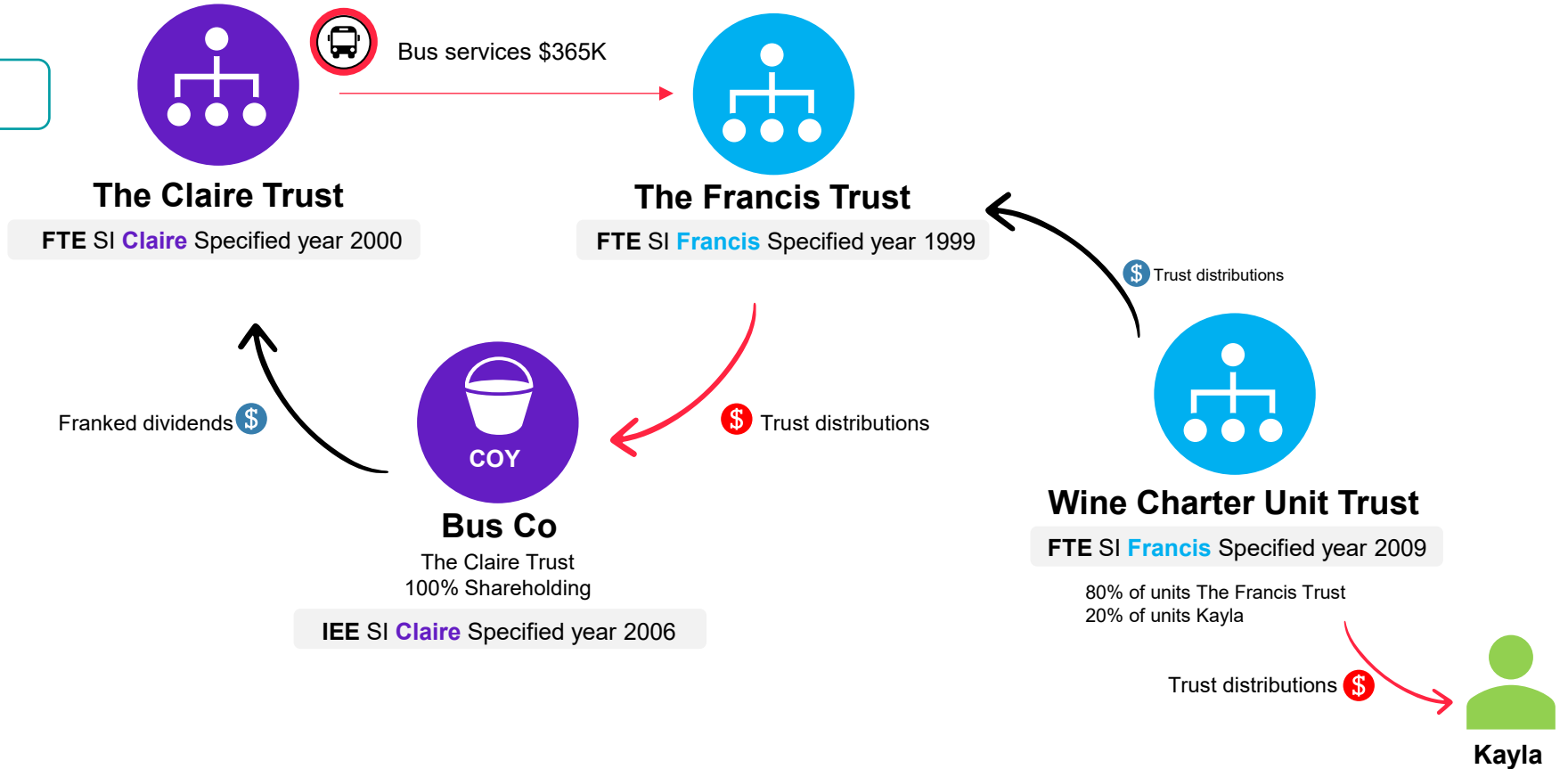
Structure



2010



Relevant provisions: 272-80, 271-15, 271-30



FTDT Events

	YTD FTDT	\$913,725	YTD GIC	\$545,219
	Total FTDT	\$4,229,850	Total GIC	\$1,968,996

The next generation begin their own FTDT fairy tale...

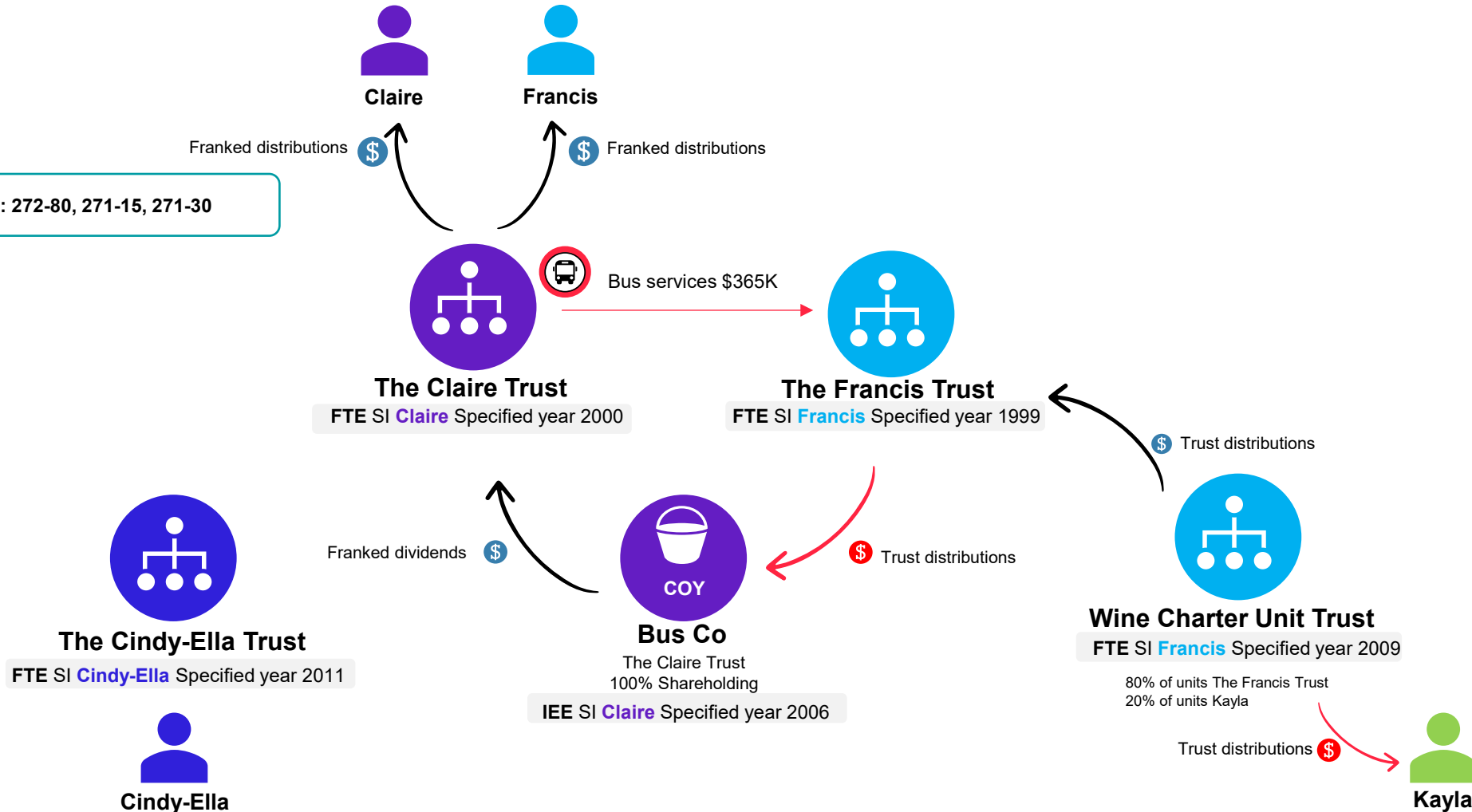
Structure



2012



Relevant provisions: 272-80, 271-15, 271-30



FTDT Events

	YTD FTDT	\$913,725	YTD GIC	\$998,914
	Total FTDT	\$6,057,300	Total GIC	\$3,761,566

Cindy-Ella becomes involved in the family business

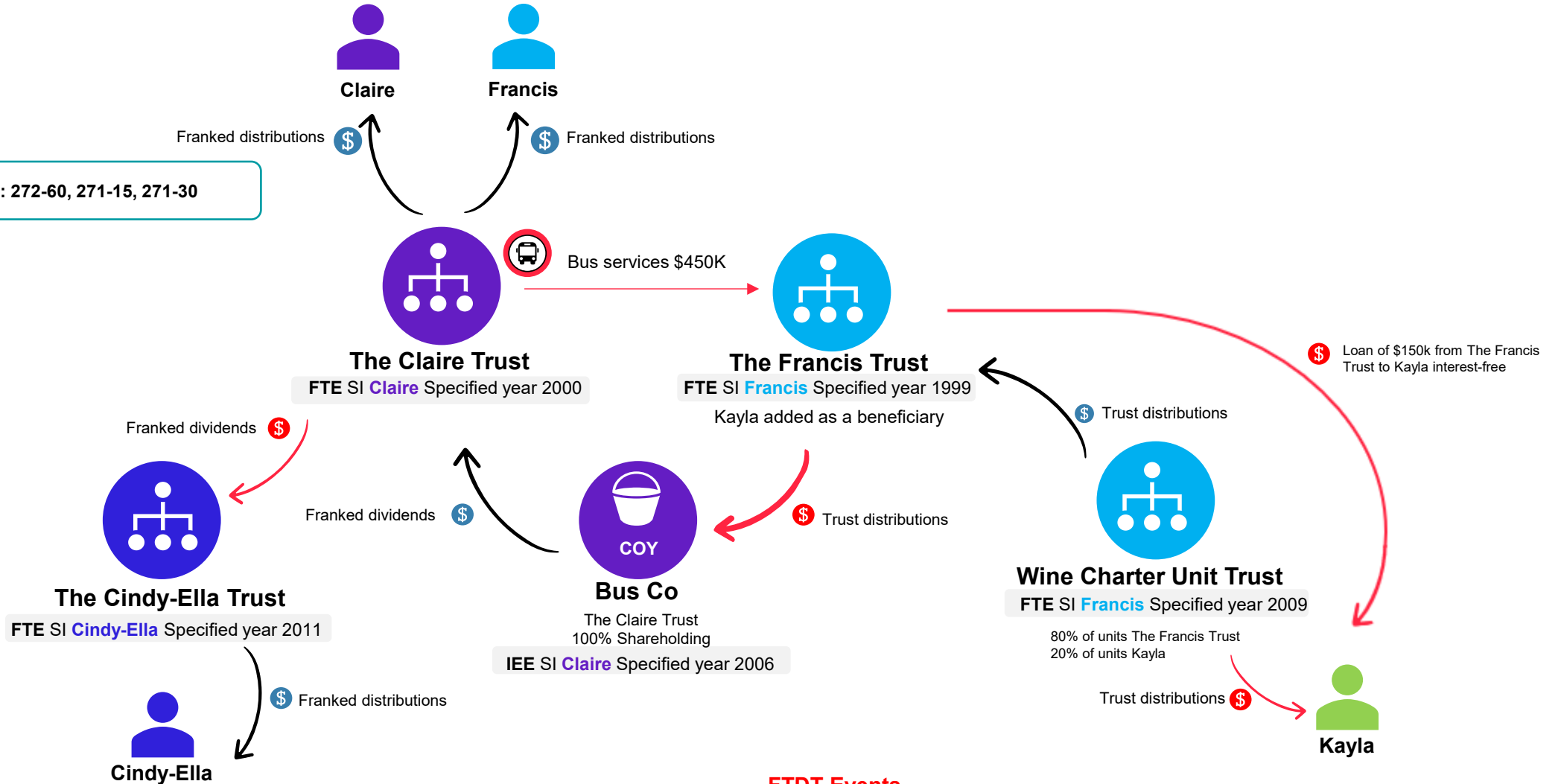
Structure



2014



Relevant provisions: 272-60, 271-15, 271-30



FTDT Events

	YTD FTDT	\$1,371,750	YTD GIC	\$1,210,653
	Total FTDT	\$8,342,775	Total GIC	\$6,056,502

Enter new tax agent and the record keeping issues...

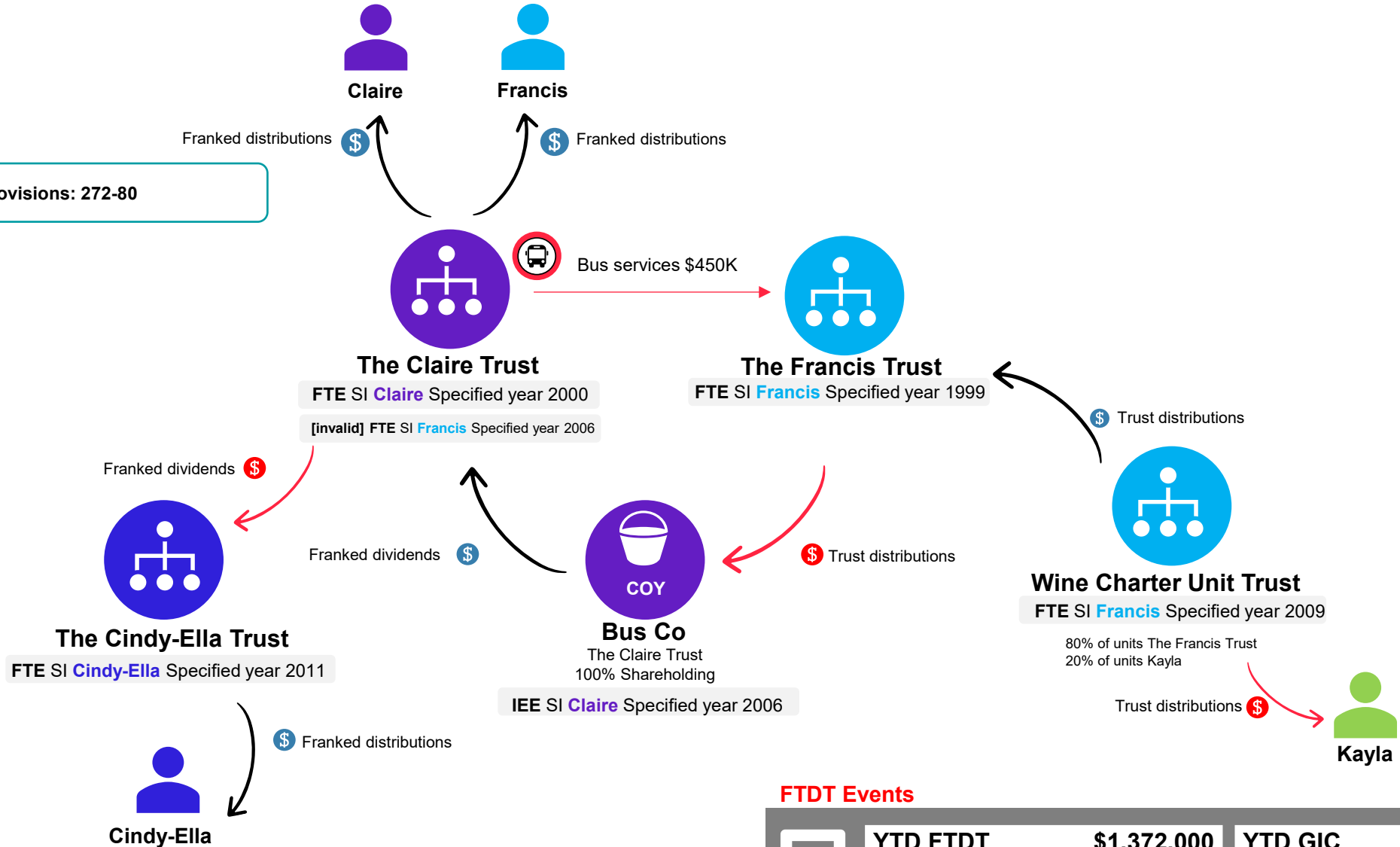
Structure



2016



Relevant provisions: 272-80



FTDT Events

	YTD FTDT	\$1,372,000	YTD GIC	\$1,674,209
	Total FTDT	\$11,086,775	Total GIC	\$9,194,766

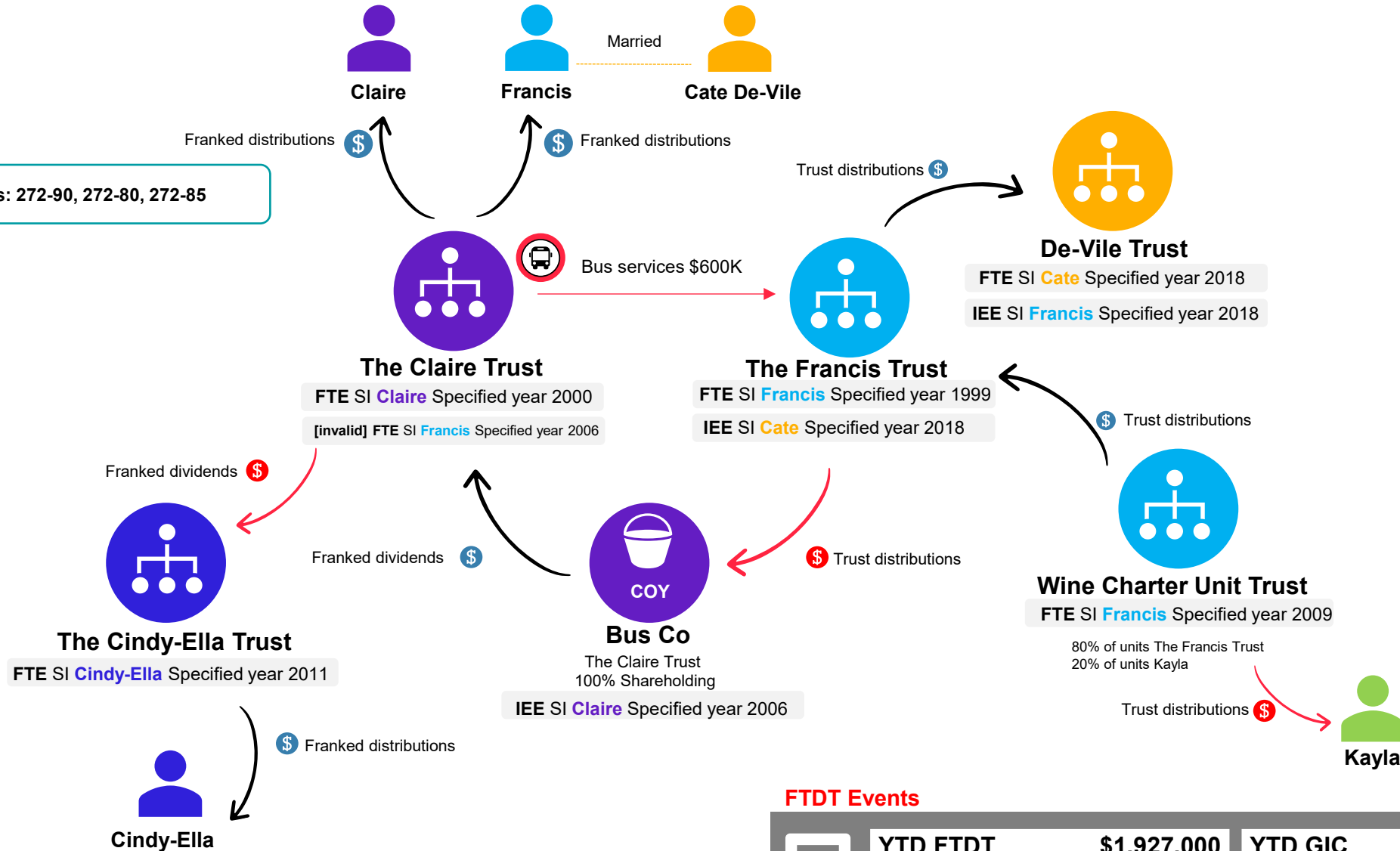
Divorce, new spouse with step kids and another entity/election...

Structure



2018

Relevant provisions: 272-90, 272-80, 272-85



FTDT Events

	YTD FTDT	\$1,927,000	YTD GIC	\$2,157,608
	Total FTDT	\$14,385,775	Total GIC	\$13,232,464

The family continues to grow, creating additional complexity...

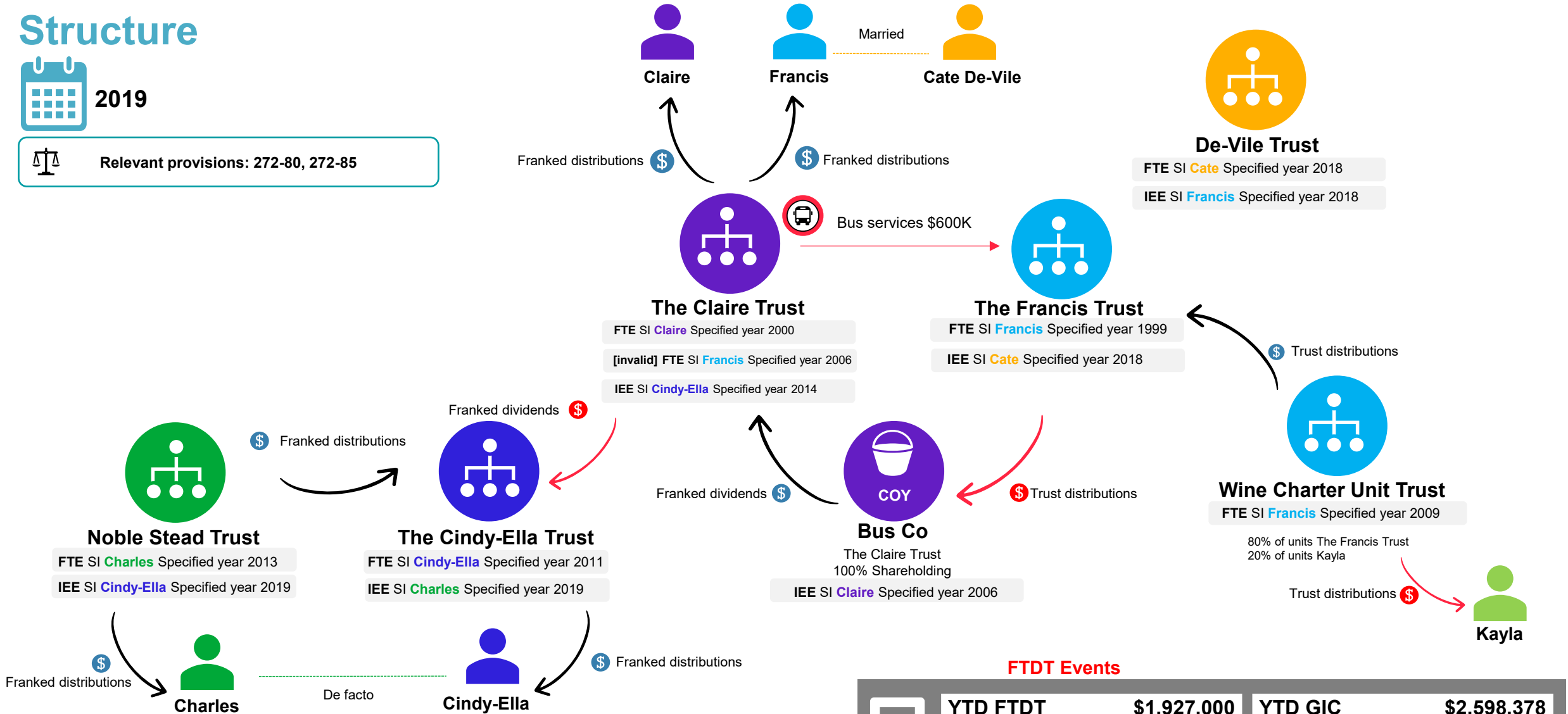
Structure



2019



Relevant provisions: 272-80, 272-85



FTDT Events

	YTD FTDT	\$1,927,000	YTD GIC	\$2,598,378
	Total FTDT	\$16,312,775	Total GIC	\$15,830,842

FTDT and GIC – the clock strikes midnight...

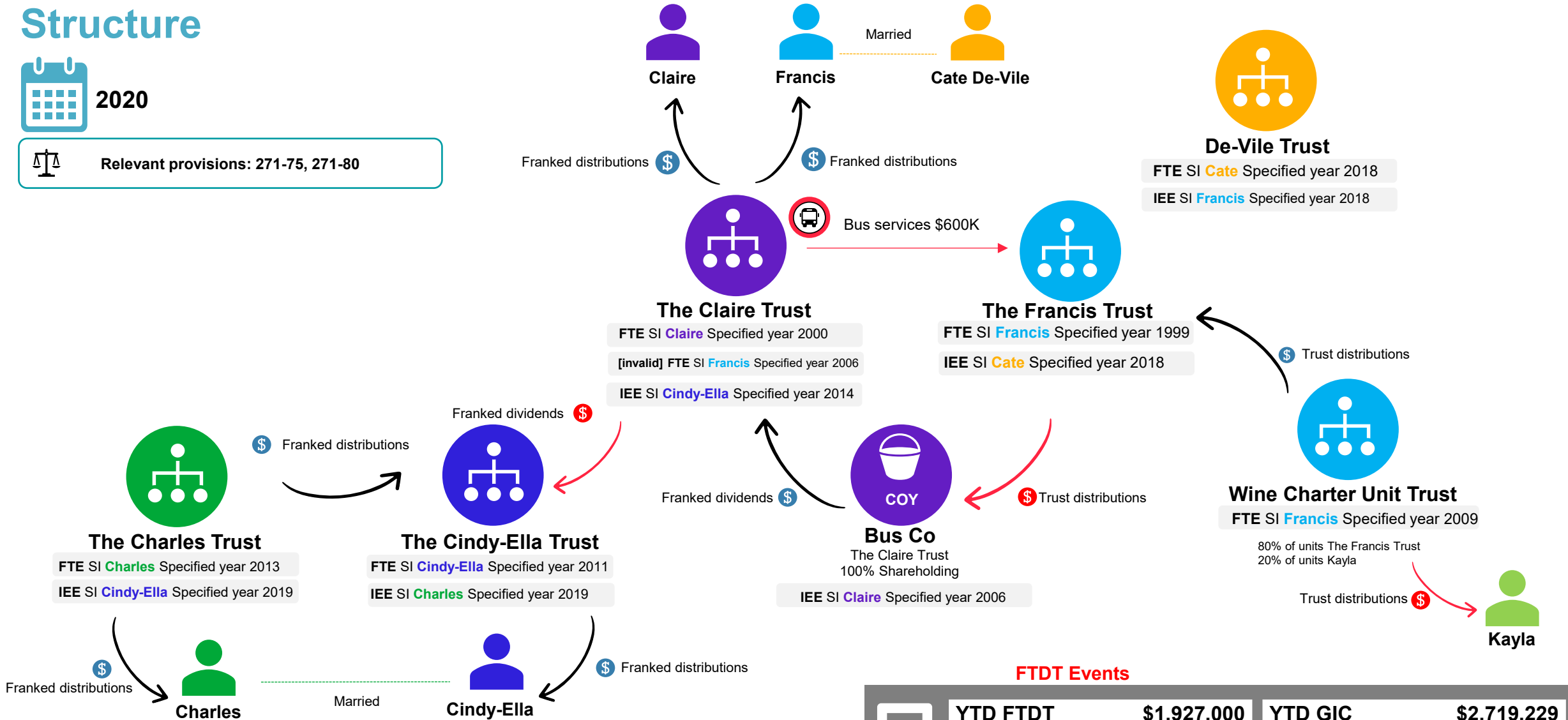
Structure



2020



Relevant provisions: 271-75, 271-80



FTDT Events

	YTD FTDT	\$1,927,000	YTD GIC	\$2,719,229
	Total FTDT	\$18,239,775	Total GIC	\$18,550,071

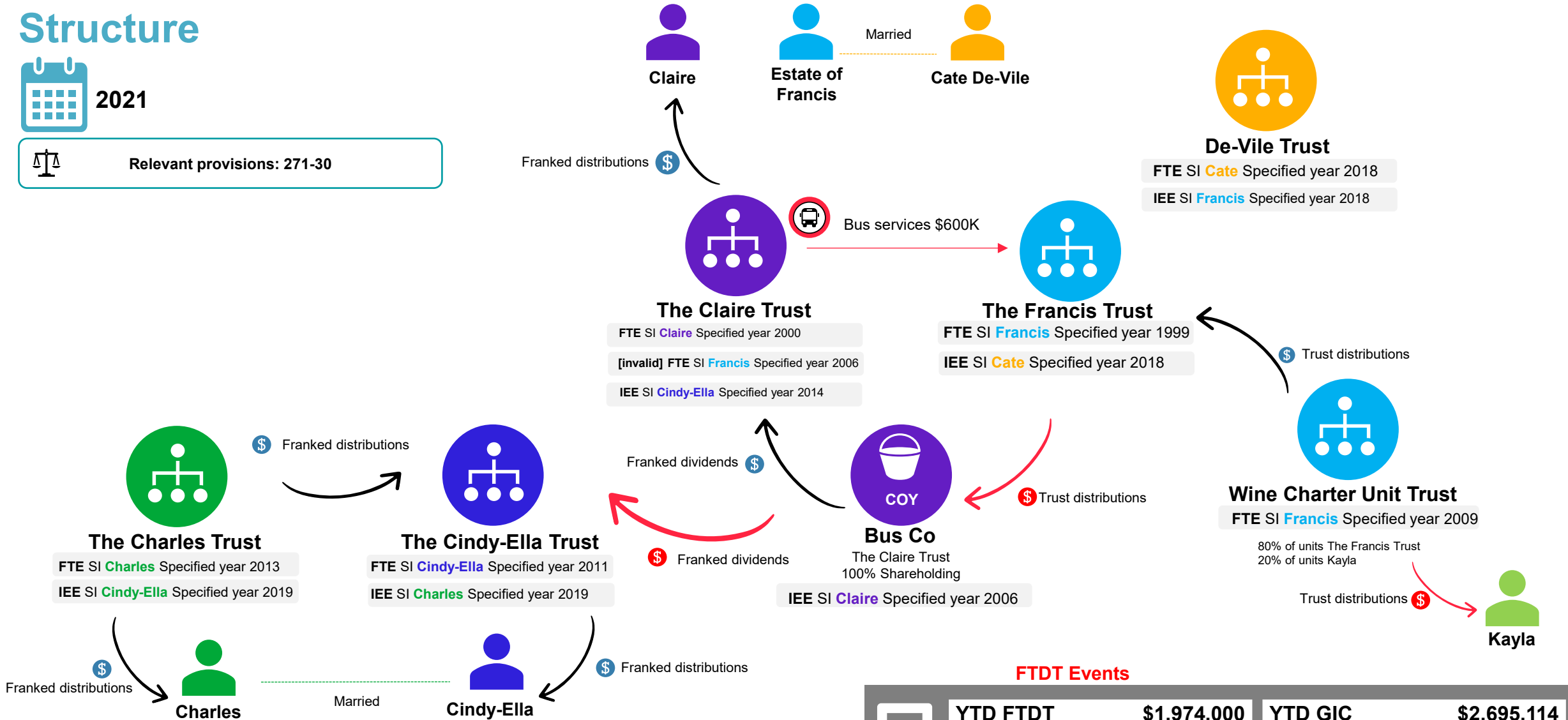
Locked in the castle and FTDT implications in the moat...

Structure



2021

Relevant provisions: 271-30



FTDT Events

	YTD FTDT	\$1,974,000	YTD GIC	\$2,695,114
	Total FTDT	\$20,213,775	Total GIC	\$21,245,186

ATO commence a review – The glass slipper drops


Scenario



2025

- The ATO commences a Next 5,000 comprehensive risk review in 2024 of the group. The ATO discovers that the group has a risk of **existing** FTDT liabilities and GIC applicable. The ATO communicates this to the taxpayer at a meeting and requests further information to confirm the amount of FTDT liability which is already owing to the ATO.
- Cindy-Ella and her accountant review the Group's transactions and are shocked to discover the amount of FTDT liabilities plus and GIC. These liabilities exceeded the estimated wealth of the Group of around \$30 million.
- Cindy-Ella and her advisors meet to discuss possible actions to address the FTDT liability and GIC.
- What do the advisers tell Cindy-Ella?
- Why doesn't it matter that there was no tax mischief?

FTDT Events

	YTD FTDT	\$0	YTD GIC	\$5,800,554
	Total FTDT	\$26,135,775	Total GIC	\$40,997,839

Limited administrative options available to the ATO

No power to extend time to vary or revoke elections

Law makes no reference to 'mischief' or 'mistake'

No discretion for ATO to ignore FTDT liabilities

GPA is not intended to apply to FTDT

ATO can't limit period of review – the liability already exists

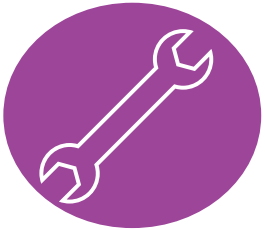
CRP needs to be consistent with the law

Limited late payment GIC remission

What is the ATO doing?



Website updates



Online Services for Agents (OSfA) fixes



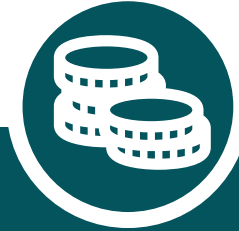
Clarifications by way of updating the FTE/IEE form declaration 'public officer'

Key takeaways

The concessions that can come with making an election now may seem advantageous, the long term implications can be restrictive and result in material financial implications for the private group.



FTDT issues are arising from succession planning, expansion of business and evolution



FTDT liabilities arise when the distribution occurs, not when the ATO gives notice specifying the amount of FTDT



Review the history of FTEs, IEEs and address FTDT issues promptly to stop additional GIC
Family trust distribution tax payment advice form (NAT 6175)



Governance and record keeping are critical – review elections annually prior to making distributions



The legislative provisions were originally intended to be punitive, however the “add on” provisions have added complexity



If you make an FTE or IEE you need to have a comprehensive understanding of your elections, future limitations, constraints and potential financial impacts

Thank you

Please complete your evaluation form

© Amy James-Velagic and Karen Rooke, Australian Taxation Office, 2025

Disclaimer: The material and opinions in this paper are those of the author and not those of The Tax Institute. The Tax Institute did not review the contents of this presentation and does not have any view as to its accuracy. The material and opinions in the paper should not be used or treated as professional advice and readers should rely on their own enquiries in making any decisions concerning their own interests.

Liability limited by a scheme approved under professional standards legislation.