Setting up a self-managed super fund

What you need to know

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Australian Government
Australian Taxation Office

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Commissioner's foreword

Self-managed super funds (SMSFs) can be a great way to provide for your retirement. Now that you've decided to establish your own fund, it's important you are aware of your responsibilities and obligations as a trustee.

The Australian Taxation Office (ATO), as regulator of SMSFs, is responsible for helping to protect the retirement income system by ensuring that SMSFs follow the rules outlined in the super and income tax legislation.

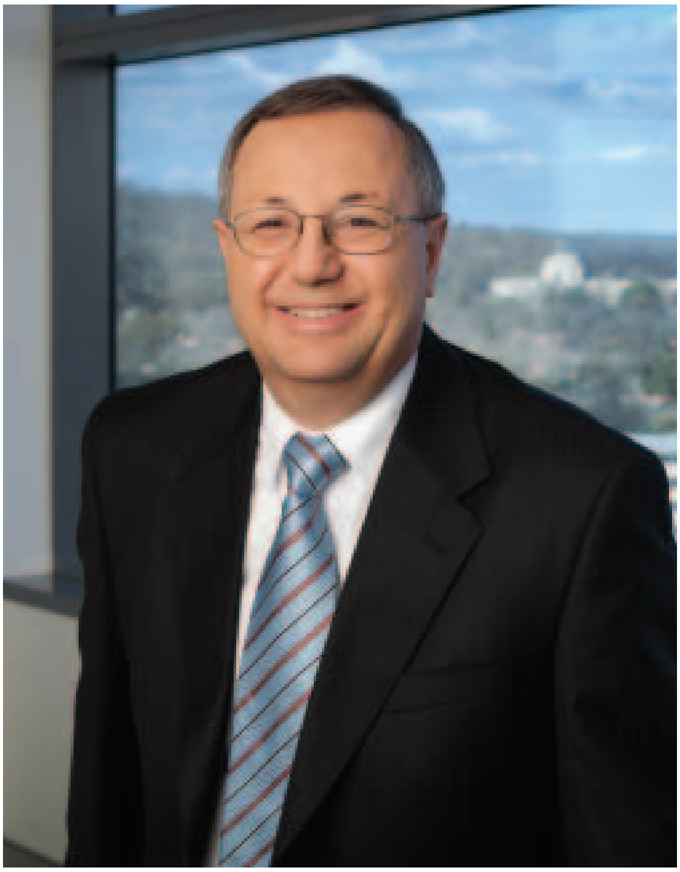
In recognition of this, our compliance program around SMSFs has increased substantially over the last two years and will be maintained and enhanced in years ahead.

We maintain a strong focus on education to encourage voluntary compliance in the market. We now have a suite of publications that you can use according to where you are in managing your fund. Our free electronic newsletter *SMSF News* is an ideal way for you to keep in touch with what is happening. See 'More information' on the inside back cover.

Remember, if you need help with your fund, you can contact us for specific advice about how the super laws apply to your situation.

Michael D'Ascenzo

Michael D'Ascenzo
Commissioner of Taxation



Finding what you need to know

Changes to SMSF

The government has announced a range of changes which affect SMSF trustees.

For more information, visit www.ato.gov.au/smsf – 'News' – 'What's new for SMSFs' then select 'Changes to super'.

Setting up an SMSF

Setting up an SMSF is about more than taking steps to get your fund started. You'll need to make important decisions about how to structure and run your fund.

We recommend you seek professional advice before setting up your fund. However, this introduction will help you make sure you've covered the essentials by:

- helping you understand how you can structure your fund
- providing the steps you need to take to set up your fund and start operating it
- explaining your obligations and responsibilities
- directing you to more information.

It also contains a series of checklists at the end of each chapter to:

- guide you through the process
- help you check that you've covered all the necessary steps.

Remember, if you use a professional adviser to help you set up your fund, you're still responsible for making sure it's done correctly.

01
Deciding to set up an SMSF

Managing your own super is a big responsibility, so it's important you make sure it's the best option for you.

Things to consider

Setting up and operating an SMSF is a major financial decision. After all, the responsibility for running the fund and complying with the law rests solely with you as the trustee.

While SMSFs are great for some people, they don't suit everyone. Managing your own super takes time, knowledge, skill and money, so before deciding to set up an SMSF:

- consider whether you have
  - the time, knowledge and skill to manage your own super fund
  - the assets and money to make the fund viable
- compare the costs and benefits of running an SMSF with those of other retirement saving options
- make sure you're setting up the fund solely to pay retirement benefits to members or the members' dependants if the members die
- check you understand what's involved in managing your own fund and what it means to be a trustee.

An SMSF is just one way to manage your super and save for your retirement. You should also consider other options before you make a final decision.

We recommend you speak to an SMSF professional (such as your accountant or a licensed financial adviser) to discuss whether an SMSF is right for you.

What it means to be a trustee

When you set up an SMSF, you take on the role of either a:

- trustee
- director of a company that is a trustee (called a corporate trustee).

A trustee is a person or company that holds and invests the fund's assets for the benefit of the members.

As a trustee or director, you'll be responsible for running the fund and making decisions that affect the retirement interests of each fund member, including yourself.

You must comply with the super and tax laws so your fund is entitled to tax concessions and members' interests are protected.

You must also:

- act in the best interests of all fund members when you make decisions
- manage the fund separately from your own affairs
- ensure the money in the fund is only accessed where the law allows it (see 'Paying super benefits to members' on page 19).

Being a trustee gives you the chance to actively manage your own super and make your own investment choices, but it also brings responsibilities. All trustees and directors are equally responsible for managing the fund and making decisions – even if one takes a more active role in its day-to-day running.

For a summary of your role and responsibilities, see 'Understanding your roles and responsibilities' on page 22. For more information, refer to www.ato.gov.au/smsf – 'In detail' – 'Print publications' – 'Running a self-managed super fund' (NAT 11032).

02 Preparing to set up your fund

You'll need to choose the best way to structure your fund so it complies with the law and suits you and the other members' circumstances.

Once you've decided to set up an SMSF you need to:

- decide on the type of trustee for your fund (either a corporate trustee or individual trustees)
- make sure you (and the other members) are eligible to be a trustee and ready to accept the responsibilities of the role
- check the residency requirements your fund must meet to be a complying fund and receive tax concessions.

Structuring your fund

For your fund to be an SMSF it must meet several requirements under the super laws.

The requirements can vary depending on whether your fund has individual trustees or a corporate trustee. Single member funds have some additional rules.

If your fund has individual trustees, it is an SMSF if all of the following apply:

- it has four or fewer members
- each member is a trustee
- each trustee is a member
- no member is an employee of another member, unless they're related
- no trustee is paid for their duties or services as a trustee.

If your fund has a corporate trustee, it's an SMSF if all of the following apply:

- it has four or fewer members
- each member of the fund is a director of the trustee company
- each director of the corporate trustee is a member of the fund
- no member is an employee of another member, unless they're related
- the corporate trustee is not paid for its services as a trustee
- no director of the corporate trustee is paid for their duties or services as director in relation to the fund.

Single member funds

You can set up your super fund with only one member.

If you have a corporate trustee for a single member fund, the member must be one of the following:

- the sole director of the trustee company
- one of only two directors, that is either
  - related to the other director
  - any other person but not an employee of the other director.

If you choose not to have a corporate trustee, you must have two individual trustees. One trustee must be the member and the other must be a trustee that is either:

- a person related to the member
- any other person but not an employer of the member.

A trustee or director can't be paid for their services as a trustee or director in relation to the fund.

The ATO regulate SMSFs. All other funds are regulated by the Australian Prudential Regulation Authority (APRA). For more information about our role and how we work with you and others to regulate your fund, refer to www.ato.gov.au/smsf – 'In detail' – 'Print publications' – 'How your self-managed super fund is regulated' (NAT 71454).

Types of trustees

Once you understand how you can structure your fund, you need to decide on the trustee structure you'll use. You can choose either of the following:

- a corporate trustee
- up to four individual trustees.

A corporate trustee is a company incorporated under the law that acts as a trustee for the fund. Generally, all directors of the company must be members of your fund and all members must be directors of the company. If you already have a company, you may choose to use it as trustee, as long as it meets the same requirements for members and trustees.

Your choice of trustee will make a difference to the way you administer your fund and the types of benefits it can pay, so make sure it suits your circumstances.

When making your decision, we recommend you:

- discuss your trustee options with an SMSF professional
- consider the benefits and costs of each type of trustee structure (for your situation).

The following table contains information you should consider when choosing the trustees for your fund.

Table 1

	Individual trustees	Corporate trustee
Setting up your fund		
Establishment costs	The fund can be less costly to establish as you don't have to set up a separate company to act as trustee.	It can be more costly to set up the fund initially as you need to establish a company to act as trustee (if you don't already have one). **For more information about what's involved in setting up a company, refer to the Australian Securities & Investments Commission (ASIC) website at www.asic.gov.au**
Single member funds	You can have a single member fund but only if you have a second individual trustee (ie you can't be the only trustee).	You can have a single member fund if either: ■ two trustees are both directors of the corporate trustee ■ the member is the only director (sole director) of the corporate trustee (company).
Governing rules	Trustees must follow the rules in: ■ the fund's trust deed ■ the super laws.	Directors of the corporate trustee must follow the rules in: ■ the fund's trust deed ■ the super laws ■ the company's constitution ■ the *Corporations Act 2001* (administered by ASIC).
Ongoing administration and reporting		
Administration	The fund has fewer reporting obligations and can be simpler to administer. Changing trustees can mean increased paperwork and administrative costs.	Having a corporate trustee can make it easier to: ■ administer the ownership of fund assets ■ keep the assets of the fund separate from any personal or business assets.
Reporting	As a trustee, you must: ■ lodge a *Self-managed super fund annual return* (SMSF annual return) for the fund ■ pay an annual supervisory levy to us.	You will have the same requirements as an individual trustee, plus as a director of the corporate trustee, you have reporting obligations to ASIC. You also must pay an annual review fee to ASIC.

	Individual trustees	Corporate trustee
Changes to trustees and members		
Administration of fund assets	Fund assets should be held in the name of all individual trustees as trustees for the fund. If there is a change in trustees, you need to: ▪ change the name on the ownership documents (such as a title deed) for each fund asset ▪ notify all relevant authorities/registries. **This process can be time-consuming and costly if your fund owns many assets, such as a wide range of shares.**	Fund assets should be held in the name of the company as trustee for the fund. If there is a change in directors, you don't have to change the name on the ownership documents for each fund asset (as the trustee is still the same).
Single member funds	If your fund has two trustees and one leaves or dies, you must appoint another trustee in their place for your fund to continue to be an SMSF.	If the company has two directors, and one leaves or dies, you don't have to replace them (a corporate trustee can have a single director). The trustee doesn't change if a member or director dies or leaves the fund.
Reporting	If there is a change in trustees or members you must notify us within 28 days.	If there is a change in trustees or members you must notify us within 28 days. If there is a change in directors, you must: ▪ notify us within 28 days ▪ report the change to ASIC.
Paying benefits to members	The trust deed must state that the fund's sole or primary purpose is to provide old age pensions. Your fund can pay lump sum benefits provided the trust deed specifically allows it to.	Your fund can pay benefits in the form of a lump sum or pension.

Trustee eligibility

In most cases, all members of the fund must be trustees, so it's important to make sure all members are eligible to be a trustee.

Generally, anyone 18 years or over and not under a legal disability (such as bankruptcy or mental impairment) can be a trustee of a super fund unless they're a disqualified person.

A person is disqualified if any of the following apply, they:

- have been convicted of an offence involving dishonesty
- have been subject to a civil penalty order under the super laws
- are considered insolvent under administration
- are an undischarged bankrupt
- have been disqualified by a regulator (for example, by us or APRA).

Penalties can apply if you act as a trustee while disqualified.

A company can't be a trustee if any of the following apply:

- the responsible officer of the company (such as a director, secretary or executive officer) is a disqualified person
- the receiver, official manager or provisional liquidator has been appointed to the company
- action has commenced to wind up the company.

You must declare that you and the other trustees or directors, are not disqualified when you register your fund with us. In certain circumstances (such as minor dishonesty offences) a disqualified person can apply to us in writing for a waiver.

Minors

Members under 18 years of age are under legal disability and cannot be trustees of a super fund. A parent or guardian of a minor who does not have a legal personal representative can act as a trustee on the minor's behalf.

Having a resident fund

To be a complying super fund and receive tax concessions, your fund must be a resident regulated super fund at all times during the income year. This means your fund must meet the definition of an 'Australian superannuation fund' for tax purposes.

If your fund is a non-complying fund, its assets (less certain contributions) and its income are taxed at the highest marginal tax rate.

Your fund must meet certain conditions to be an 'Australian superannuation fund'. For more information, refer to www.ato.gov.au/smsf and search for 'Residency of self-managed super funds'.

If a member moves or travels overseas for an extended period, this may affect the residency status of the fund.

Check your progress

Structuring your fund

- ☐ Your fund is structured so it meets the definition of an SMSF (see page 6).

Having a resident fund

- ☐ You know your fund meets the residency requirements to be a complying fund and receives tax concessions (see page 10).

Types of trustees

- ☐ You have considered the benefits and costs of appointing a corporate trustee or individual trustees (see Table 1).
- ☐ You have considered whether you need to discuss your trustee options with an SMSF professional (see pages 7–8).
- ☐ You have decided on the type of trustee for your fund (see page 7).

Trustee eligibility

- ☐ Each individual or the company is eligible to be a trustee (see page 10).
- ☐ No individual or responsible officer of the company is a disqualified person (see page 10).

03
Getting your fund started

Once you've decided how to structure your fund, there are steps you must take to get it started.

It's important to set up your fund correctly so:
- it's a complying super fund and qualifies for tax concessions
- you protect your retirement savings
- you avoid penalties
- your fund is able to pay specific benefits
- it's as easy as possible to administer.

An SMSF professional can help you set up your fund. For example:
- a legal practitioner can draft your fund's trust deed
- an accountant or administrator can help you organise the paperwork and register your fund with us
- a financial adviser can help you prepare an investment strategy.

Many SMSF professionals also offer packages or kits to make the process easier. If you purchase a package or kit, it's important to make sure the trust deed complies with the latest changes to the law and is unique to:
- your fund
- its objectives
- your members' circumstances.

If you use an SMSF professional to help you set up your fund, you're still responsible for making sure it's done correctly.

An SMSF is a trust

As all SMSFs are trusts, there are certain steps you must follow under trust law to set up your fund correctly.

A trust is an arrangement where a person or company (the trustee) holds assets (trust property) in trust for the benefit of others (the beneficiaries). A super fund is a special type of trust, set up and maintained for the sole purpose of providing retirement benefits to its members (the beneficiaries).

To create a trust, you must have:
- trustees
- a trust deed
- property (assets)
- identifiable beneficiaries
- the intention to create a trust.

Obtaining a trust deed

A trust deed is a legal document that sets out the rules for establishing and operating your fund. Together with the super laws, they form the fund's governing rules and detail the:

- powers, duties and responsibilities of the fund's trustees
- rights of the members
- scope of the operation of the super fund (what can and can't be done within the super laws).

An SMSF professional can help you organise a trust deed for your fund, but as it's a legal document, you need to make sure it's prepared by someone qualified to do so.

The trust deed covers areas such as:

- the fund's objectives
- who the trustees are
- who can be a trustee
- how trustees are appointed or removed
- who can be a member
- when contributions can be made
- how benefits can be paid (pension or lump sum) within SISA requirements
- when benefits can be paid
- how to appoint professional advisers (such as an auditor)
- the procedures for winding up the fund.

The trust deed must be tailored to your fund and correctly drafted to meet its objectives and the members' needs (for example, allowing for the payment of specific benefit payments). It must also meet all the requirements of the relevant super laws.

If your fund has individual trustees, the trust deed needs to state that the fund's sole purpose is to pay retirement benefits or death benefits to members' beneficiaries.

All trustees must **sign and date** the trust deed and ensure it is properly executed according to the relevant state or territory laws.

All trustees are bound by the trust deed and are equally responsible if its rules are not followed, so it's important that all trustees understand the contents of the deed.

As a trustee, you need to make sure the trust deed is regularly reviewed and updated so it complies with the super laws (including changes to the law) and the members' needs.

Appointing trustees

Once you've decided on the type of trustee(s) for your fund, the next step is to appoint them. New funds usually appoint trustees under the fund's trust deed.

Remember, for your fund to be an SMSF, generally all members of the fund must be trustees or directors of the corporate trustee (see 'Structuring your fund' on page 6).

All trustees and directors must consent in writing to being appointed and you need to keep these records for at least 10 years.

Holding fund assets

To be legally established, your fund needs to hold assets. The trustees hold the fund's assets in trust for the benefit of the members.

Your fund is usually established in this way when the members make a contribution to the fund. A contribution can take the form of money or a transfer of certain assets – for example, listed shares and securities.

You must open a bank account for the fund before a member can make a cash contribution (see 'Opening a bank account' on page 14).

For more information about contributions, see 'Accepting contributions and rollovers' on page 17.

Ownership of your fund's assets

One of your trustee responsibilities is to ensure the assets of the fund are protected and are held separately from your own assets.

Assets should be recorded in a way that:

- distinguishes them from the trustees' personal or business assets
- clearly shows legal ownership by the fund.

This can protect fund assets in the event of a creditor dispute and prevent costly legal action to prove who owns them.

Depending on the types of trustees chosen, fund assets (other than money) should be held in the name of either:

- the individual trustees as trustees for the fund
- the corporate trustee as trustee for the fund.

The assets can't be held in the name of a trustee or member as an individual.

Examples

The Jones Family Super Fund has two individual trustees, Bill and Penny Jones. Where legally possible, the fund's assets need to be held in the name of Bill and Penny Jones as trustees for the Jones Family Super Fund.

The Anderson Super Fund has a corporate trustee, ABC Pty Ltd. Where possible, the fund's assets need to be held in the name of ABC Pty Ltd as trustee for the Anderson Super Fund.

In some states, where it's not possible to use the name of the fund, you need to clearly show and document your fund's ownership of the asset, for example by using:

- a caveat
- legal instrument, or
- declaration of trust.

For more information, refer to www.ato.gov.au/smsf and search for 'Selling or transferring assets' (NAT 70642).

Signing a trustee declaration

If you're a new trustee (or director of a corporate trustee) you must sign a declaration, in the approved form, within **21 days** of becoming a trustee or director.

By signing the declaration, you're stating you understand your duties and responsibilities as a trustee or director of the corporate trustee.

You must keep the signed declaration for as long as you are a trustee (or director of the corporate trustee). If this period is less than 10 years, it must be retained for at least 10 years.

The declaration must be available for us to see if we request it as part of an audit or review.

If you don't sign and retain the declaration, or make it available to us when we request it, penalties may be imposed.

To obtain a copy of the *Trustee declaration* (NAT 71089), visit our website at www.ato.gov.au and search for 'Trustee declaration'.

Recording each member's tax file number (TFN)

When a member joins your fund, it's important you record their TFN. You'll also be asked to provide each trustee's or director's TFN when you register the fund with us.

If a member has not quoted their TFN:

- your fund can't accept certain contributions made on their behalf, including personal and eligible spouse contributions
- your fund needs to pay extra tax on some contributions made to that member's account, including
  - employer and salary sacrifice contributions
  - personal contributions the member claims as an income tax deduction
- the member may not be able to receive the super co-contribution.

For more information about TFNs and how we tax contributions refer to www.ato.gov.au/smsf – 'In detail' – 'Print publications' and select 'Running a self-managed super fund' (NAT 11032).

Registering with us

Once your fund is legally established (by executing the trust deed and setting aside assets for the benefit of members) and all trustees have signed a trustee declaration, you must register your fund with us.

When registering your fund, you should elect for it to be regulated, and do this within 60 days of establishing your fund.

You:

- will be provided with a TFN and ABN
- can register for GST.

You can do this either:

- **online via the Australian Business Register at www.abr.gov.au**
- **by completing the *ABN registration for superannuation entities* (NAT 2944) form and lodging it with us. You can obtain a copy, by phoning us on 1300 720 092.**

Electing for your fund to be regulated

For your fund to be a complying fund and receive tax concessions, elect for it to be regulated and comply with the super laws.

You need to make the election within **60 days** of establishing your SMSF; otherwise, we may not accept your fund as a regulated fund. Generally, your fund is established after the trust deed has been signed and the first contribution is made.

Funds that are not regulated are not SMSFs. Non-regulated funds are not entitled to tax concessions and the members' employers (and members who are self-employed) can't claim deductions for contributions they make to the fund.

If you make the election more than 60 days after you establish the fund, tell us your reasons for the delay in writing.

Once you have asked us to regulate your fund and we accept your election, the election can't be reversed. Your fund will continue to be regulated until it's wound up.

Once we receive your application, we will review it to determine if we accept your request to become a regulated SMSF. We may ask you to provide various documents in order to finalise your application, including:

- a copy of the trust deed of the fund
- copies of minutes from trustee meetings
- details of the investment strategy outlining the proposed asset allocation of the fund
- copies of the acquisition or transfer contract for all assets acquired by the fund, if applicable
- details (including amounts) of any proposed rollovers from other funds to your fund
- copy of the signed trustee declaration form for all individual trustees and/or the directors of the corporate trustee
- evidence of bank account details for the fund.

Obtaining a TFN and ABN

We allocate a TFN and an ABN to all funds that register with us.

Once we give you an ABN, we place some of your fund's details on the Australian Business Register and Super Fund Lookup.

Once we fully approve your application, we place all your fund details on Super Fund Lookup.

Other super funds can use Super Fund Lookup to check whether your fund is an eligible fund for transferring super benefits.

To access Super Fund Lookup, visit www.superfundlookup.gov.au

Registering for GST

You must register the fund for GST if its annual turnover is greater than $75,000. Annual turnover does not include contributions, gross income from financial supplies (including interest and dividends), residential rent or income generated outside Australia. It does include gross income from the lease of equipment or commercial property.

Your fund must have an ABN to register for GST.

Opening a bank account

You need to open a bank account in your fund's name (not your name or any other entity's name):

- to manage the fund's operations
- to accept cash contributions and rollovers of super benefits.

Contributions and rollovers are deposited into the fund's account. The money is:

- invested, according to the fund's investment strategy
- used to pay the fund's expenses and liabilities.

Earnings on fund investments are also credited to the fund's account.

Although you don't have to open a separate bank account for each member, you must keep a separate record of their entitlement (called a 'member account'). Each member account will record:

- contributions made on behalf of the member
- any fund investment earnings allocated to them
- payments of any super benefits.

The fund's bank account must be kept separate to each of the trustees' individual bank accounts and any related entity's bank accounts.

We recommend you use safeguards, such as joint bank account signatories, to protect the assets of the fund.

All your fund's assets (including money) must be kept separate from your personal or business assets.

Check your progress

Obtaining a trust deed

- [ ] You have organised a trust deed for your fund (see page 12).
- [ ] The trust deed is tailored to the fund, its objectives and the member's circumstances, and meets all the requirements of super laws (see page 12).
- [ ] All trustees have read and understand the trust deed (see page 12).
- [ ] The trust deed has been signed by all trustees, dated and properly executed (see page 12).

Appointing trustees

- [ ] You have appointed individual trustees or a corporate trustee to manage your fund (see page 12).
- [ ] All trustees or directors have consented in writing to their appointment (see page 12).

Holding fund assets

- [ ] The fund has assets (usually by making an initial contribution to the fund) (see page 12).
- [ ] The fund's assets are held in the name of the trustee(s) (see page 13).

Signing a trustee declaration

- [ ] All trustees or directors of the corporate trustee have signed a trustee declaration within 21 days of becoming a trustee or director (see page 13).
- [ ] All trustees or directors know they need to retain the declaration and make it available to us if requested (see page 13).

Recording each member's TFN

- [ ] You have a record of each member's TFN (see page 13).

Registering with us

- [ ] You have elected for your fund to be regulated within 60 days of establishing it (see page 13).
- [ ] You have received a TFN for the fund (see page 13).
- [ ] You have received an ABN for the fund (see page 13).
- [ ] You know whether or not your fund needs to register for GST (see page 13).

Opening a bank account

- [ ] You have opened a bank account in the name of the fund (see page 14).
- [ ] You know you must keep a record of each member's benefit in the fund (see page 15).

04
Starting to operate your fund

Once your fund is legally established, there are a number of steps you must put in place as a trustee or director.

The following information will help you get started.

For more detailed information about these topics, refer to www.ato.gov.au/smsf – 'In detail' – 'Print publications' and select 'Running a self-managed super fund' (NAT 11032).

Preparing an investment strategy

Before you start making investments, you must prepare an investment strategy.

An investment strategy sets out how you plan to achieve the fund's investment objectives. It provides you and the other trustees with a framework for making investment decisions to increase member benefits for their retirement.

A financial adviser can help you prepare an investment strategy, but you and the other trustees are responsible for managing the fund's investments.

There is no prescribed format for the investment strategy, but it must reflect the purpose and circumstances of the fund and its members.

When preparing your investment strategy, consider the following:

- diversification (investing in a range of assets and asset classes)
- the risk and likely return from investments, to maximise member returns
- the liquidity of fund's assets (how easily they can be converted to cash to meet fund expenses)
- the fund's ability to pay benefits when members retire and other costs the fund incurs
- the members' needs and circumstances.

Your investment strategy should be in writing so you can show your investment decisions comply with it and the super laws.

For more information about preparing an investment strategy and helpful tips on investing, refer to the ASIC consumer website at www.moneysmart.gov.au

Accepting contributions and rollovers

As a trustee, you must know the rules for accepting contributions and rollovers. These rules are set out in:

- your fund's trust deed
- the super laws.

Make sure any contributions and rollovers are:

- properly documented, including the amount, type and breakdown of components
- allocated to the correct member's account.

Contributions

A contribution is a payment made to your fund in the form of money or an asset other than money (called an 'in specie' contribution).

You must allocate contributions to each member's account within 28 days after the end of the month that you receive them.

You must accept contributions according to:

- your fund's trust deed
- the 'contribution standards' in the super laws
- the contribution limits that apply (called 'contribution caps')
- any investment restrictions.

Whether your fund can accept contributions for a member will depend on:

- the type of contributions
- whether the contribution exceeds the contribution caps
- the age of the member
- whether they have quoted their TFN.

Provided the governing rules of your fund allow it, your SMSF can generally accept:

- employer contributions
- personal contributions
- salary sacrifice contributions
- super co-contributions
- eligible spouse contributions.

As a trustee, you generally can't acquire non-cash assets from related parties, such as:

- fund members
- their families and partners
- related companies and trusts.

There are some significant exceptions including:

- listed shares and securities
- business real property (land and buildings used wholly and exclusively in a business).

Remember, you should also consider how capital gains tax applies before you transfer or sell any assets to the fund as an 'in specie' contribution.

Example

A member of XYZ Super Fund owns a single residential property and wants to contribute it to the fund. The trustees can't accept the contribution as it would be a breach of the investment restrictions (because the member is a related party of the fund and the trustees can't acquire an asset from a related party unless an exception applies).

You may incur a penalty if you fail to comply with the contribution standards and investment restrictions.

Rollovers and transfers

Once your fund is established, a member can rollover or transfer some or all of their existing super benefits to it. Before they can do this, they need to provide proof to their former super fund that your SMSF is a regulated fund and is eligible to receive rollovers. They can do this by visiting **www.superfundlookup.gov.au**

Members can use a *Request to transfer whole balance of superannuation benefits between funds* (NAT 71223) form to roll over the whole balance of their super benefits to your fund. They must also meet the requirements of the fund they are leaving.

Generally, when the ABN of your fund first appears on Super Fund Lookup, a message will show that the application is still being processed and provide an estimated date for completion. When your fund's application has been processed and approved, the status of your fund will be updated to appear on Super Fund Lookup as 'Registered – Status not determined'. Your fund will keep this status until it has lodged its first tax return and has been issued with a notice of compliance. Super funds cannot roll over your super benefits to your fund while your application is being processed.

Other super funds cannot process a rollover request until the status of your fund has been updated on Super Fund Lookup to 'Registered – Status not determined'.

You must register your members correctly at the registration point as super funds will verify the details of members requesting the rollover to ensure they are a member of your fund. If the members are not registered or not registered correctly this may delay any rollovers into your fund.

To obtain this form, refer to www.ato.gov.au/super – 'Calculator, rates and forms' – 'Forms and instructions' and select 'Request to transfer whole balance of superannuation benefits between funds' (NAT 71223).

If a member only wants to roll over part of their super benefits from another fund, they must contact the fund directly to organise the paperwork. The fund will complete a *Rollover benefits statement* (NAT 70944). The completed statement will be sent to your fund within seven days of paying the rollover payment and a copy to the member within 30 days.

Rollovers and transfers are not treated as contributions in the fund.

Record keeping

As an SMSF trustee, you are responsible for keeping proper and accurate fund records.

You must keep certain records under the super, tax and other laws, which show you:

- meet your tax and audit obligations
- operate your fund efficiently.

Keeping good records will:

- provide you with an accurate history of your fund
- support the decisions you (and other trustees) make on the fund's behalf
- help us and approved auditors work out whether you have complied with the super laws.

When setting up your fund, consider:

- how you'll manage the fund's records
- whether you'll appoint an SMSF professional to help you.

Records you must keep include:

Administrative records	Financial and tax records
Minutes of trustee meetings and decisions (where fund matters were discussed)	Accounting records to explain the transactions and financial position of the fund
Records of change in fund details (such as trustees)	Statement of financial position (balance sheet)
Trustee declarations	Annual operating statement (profit and loss)
Written consents to act as trustee	Records needed to prepare your fund's annual returns and accounts
Records needed to complete your fund's annual audit	Annual returns
Audit reports	Records that explain your fund's assessable income and deductible expenses
Trust deed	Documents showing ownership of fund assets
Investment strategy	Bank account statements
Registration documents (ABN, TFN and GST notifications)	Records to show contributions, rollovers and payments to members
Notice of fund compliance (received after first year's audit)	Record of each member's account
Death benefit nominations	PAYG payment summaries
Letter of engagement and management letter (see page 23)	

Generally, records need to be kept for a minimum of five or 10 years. For example, keep:

- financial records, such as accounts, for a minimum of five years
- non-financial records, such as minutes of meetings and decisions, for at least 10 years.

If you use an SMSF professional, you should discuss with them what records they will look after and which ones you will keep.

Appointing SMSF professionals

Under the super laws, you must appoint an independent approved auditor to audit your fund's operations each year.

For more information, see 'Appointing an independent approved auditor' on page 23.

In certain circumstances, you must appoint an actuary and obtain an actuarial certificate if your fund starts to pay a pension to a member. An actuary works out:

- whether your fund can meet its pension liabilities
- what assets are being used to fund pension payments to members, as the income from these assets is exempt from tax.

For more information about when to use an actuary, refer to www.ato.gov.au/smsf – 'In detail' – 'Print publications' and select 'Running a self-managed super fund' (NAT 11032).

When you set up your fund, consider whether to use one or more SMSF professionals to help you manage the fund. For example:

- a **tax agent** can complete and lodge your fund's annual income tax and regulatory return, provide you with taxation advice and represent you in your dealings with us
- an **accountant** can help prepare your fund's accounts and its annual financial position and operating statements
- a **fund administrator** can help you manage the day-to-day running of your fund and meet your annual reporting and administrative obligations
- a **legal practitioner** can review and update your fund's trust deed and give you advice on such things as divorce, estate planning or disputes between trustees
- a **financial adviser** can help you prepare an investment strategy and provide you with financial and investment advice.

Sometimes, a professional can take on more than one role in helping you manage your fund. For example, your fund's accountant will often also be your fund's tax agent. It is important to remember that you must use an independent auditor.

If you decide to use an SMSF professional, choose one who is qualified and right for you and your circumstances. To provide financial advice, a person must hold an Australian Financial Services License.

You can check whether your financial adviser is appropriately licensed or authorised to provide such advice on the ASIC website at www.asic.gov.au

Generally, only a registered tax agent can charge a fee to prepare and lodge your fund's tax return or provide you with tax advice.

You can check whether your tax agent is registered by going to the Tax Practitioners Board website at www.tpb.gov.au

Even if you use a professional, the responsibility for running the fund and making decisions rests with you and the other trustees.

Paying super benefits to members

As a trustee, you must know the rules for paying benefits to members, so you know when and how they can be paid. These rules are set out in:

- your fund's trust deed
- the super laws (referred to as 'payment standards').

A member can only access all or part of their super benefits if they satisfy one of the conditions of release specified in the super laws.

Schemes that try to get your super money out of existing funds early are usually illegal and fraudulent. If you are caught in one of these schemes you will pay heavy tax and legal penalties.

For more information on what a condition of release is and when a member meets it, refer to www.ato.gov.au/smsf – 'In detail' – 'Print publications' and select 'Running a self-managed super fund' (NAT 11032).

If your fund's governing rules allow it, you can generally pay a super benefit as:

- a lump sum
- an income stream (pension or annuity)
- a combination of both.

Make sure all decisions for payment of benefits are properly documented, and that you comply with any reporting and administrative requirements, such as:

- registering for pay as you go (PAYG) withholding
- issuing payment summaries
- obtaining actuary certificates.

It's possible for your fund to pay super benefits and still have members contributing to it, as long as certain conditions are met.

For more information about when and how super benefits can be paid and your reporting obligations, refer to www.ato.gov.au/smsf – 'In detail' – 'Print publications' and select 'Running a self-managed super fund' (NAT 11032).

Beware of promoters who approach you to set up an SMSF to either:

- **withdraw some or all of your super earlier than allowed under the law**
- **pay for things other than your retirement.**

These arrangements are illegal. If you access your super before you're legally entitled, severe penalties may apply to you, as well as anyone who receives the benefit.

Planning for the future

Setting up an SMSF is about more than just organising the paperwork to get started – it's about planning for the future. We recommend you, and the fund's members, consider things such as death benefit nominations and insurance.

We have provided some general information about these topics below. However, for more information that is specific to your circumstances, we recommend you speak to an SMSF professional.

Death benefit nominations

A **death benefit** is a payment made from a super fund on the death of a member. It's usually paid to either:

- one or more of the member's dependants (such as a spouse or child)
- their estate.

In some cases, it may be paid to a non-dependant.

For more information about death benefits and how they are taxed, go to www.ato.gov.au and search for 'death benefit'.

If the fund's trust deed permits, a member can nominate who they want their death benefit paid to, by way of a death benefit nomination.

A **death benefit nomination** is a notice given to the trustees setting out who to pay the death benefit to and in what proportion. It is either:

- binding – it directs the trustees to pay the member's death benefit to a legal personal representative or dependant
- non-binding – it notifies the trustees of the member's preferred beneficiaries, leaving the trustees to make the final decision.

If your fund does not have a valid binding nomination for a member, their death benefit is paid according to the fund's trust deed, with the trustees being guided, as appropriate, by any non-binding nomination.

Insurance

When your fund acquires new assets, such as real property and collectables, we recommend you insure these assets to protect the fund from financial loss.

Also consider arranging insurance to protect your fund's members (or their dependants) against death, injury, ill-health or income loss.

Insurance premiums your fund pays may be tax deductible.

Example

A commercial property owned by the trustees of XYZ Super Fund is destroyed by fire. Because the property was insured, the fund was compensated for its loss and the members' benefits were protected.

Check your progress

Preparing an investment strategy

- [ ] Your fund has a written investment strategy (see page 16).
- [ ] The investment strategy is unique to the fund and the members' circumstances (see page 16).
- [ ] All investments in the strategy comply with the super laws (see page 16).

Accepting rollovers and contributions

- [ ] You have:
  - accepted contributions and rollovers to your fund according to the super laws and the fund's trust deed
  - kept a record of all contributions and rollovers and allocated them to each member's account

  (see pages 17–18).

Record-keeping

- [ ] You have considered how you will manage the fund's records (see page 18).
- [ ] You know your record keeping responsibilities (see page 18).

Appointing SMSF professionals

- [ ] You have considered whether to use one or more SMSF professionals to help manage your fund (see page 19).
- [ ] You know you need to appoint an independent approved auditor for each income year (see page 19).

Planning for the future

- [ ] The fund's members have considered whether to lodge a death benefit nomination with the trustees (see page 20).
- [ ] You have considered obtaining life, disability or income protection insurance on the members' behalf (see page 20).
- [ ] You have considered insurance to protect the fund's assets (see page 20).

05
Understanding your role and responsibilities

Complying with the super and tax laws is your responsibility, even if you use a super or tax professional, or a financial adviser. So it is important you understand what you need to do.

As a trustee, your duties and responsibilities include:

- making sure the fund's sole purpose is to pay retirement benefits to members or their beneficiaries in the event of their death
- accepting contributions and paying benefits (pension and lump sum) according to the super and tax laws
- making investment decisions and complying with any restrictions
- ensuring an independent approved auditor is appointed for each income year
- completing administrative tasks, such as lodging annual returns and record-keeping
- reviewing and updating the fund's trust deed and investment strategy.

You must tell us within **28 days** if there is a change in:

- trustees
- directors of the corporate trustee
- members
- contact details (contact person, phone and fax numbers)
- address (postal, registered or address for service of fund notices).

To tell us about changes to your fund:

- **use our online service at www.abr.gov.au if you have an AUSkey or ATO digital certificate**
- **lodge a *Change of details for superannuation entities* (NAT 3036) form.**

To avoid penalties, make sure you understand and comply with your duties and responsibilities under the super and tax laws. If you don't comply, we can:

- impose administrative penalties
- arrange an enforceable undertaking with you to rectify the contravention
- make your fund non complying (which means your fund loses its tax concessions)
- disqualify you as a trustee
- prosecute in the most serious cases.

If you find you're having difficulties, it's important you tell us early.

For more information about your duties and responsibilities as trustee, and the penalties that may apply if you don't comply, refer to www.ato.gov.au/smsf – 'In detail' – 'Print publications' and select 'Running a self-managed super fund' (NAT 11032).

Your annual responsibilities

As a trustee there are a range of activities you must do each year to ensure your fund complies with the law and operates effectively. This includes completing your *SMSF annual return* (NAT 71226) which involves reporting your fund's income tax, member contributions and regulatory information.

You must also ensure your SMSF is audited by an independent approved auditor before you lodge your SMSF annual return. The SMSF annual return must be completed in its entirety, including approved auditor details, or your lodgment will be rejected.

From January 2010, the SMSF annual return cannot be processed if there are no assets in the fund, unless it is your fund's final return.

Investing your fund's money

Being a trustee of an SMSF gives you more flexibility when it comes to investing your fund's money. Unlike some other super funds, you can choose the investments for your fund, so long as you invest according to:

- the fund's trust deed
- the investment strategy
- the super laws.

While the super laws don't tell you what you can and can't invest in, they do set out certain investment restrictions you **must** comply with.

For example, in most cases, trustees **cannot**:

- lend the fund's money or provide financial assistance to members and their relatives
- acquire assets (with limited exceptions) from related parties of the fund, including
  - fund members and their associates
  - all the fund's standard employer-sponsors and their associates
- borrow money on the fund's behalf (certain limited recourse borrowing arrangements are allowed)
- lend to, invest in or lease to a related party of the fund (including related trusts), more than 5% of the fund's total assets
- enter into investments on the fund's behalf that are not made or maintained on an arm's length (commercial) basis.

The investment restrictions are some of the most important rules you need to comply with under the super laws. If you don't, we may impose significant penalties. We recommend you speak to an SMSF professional to make sure your investments comply with the law.

For more information about the investment rules, including the limited exceptions under the super laws, refer to www.ato.gov.au/smsf – 'In detail' – 'Print publications' and select 'Running a self-managed super fund' (NAT 11032).

For more information about investing, including helpful financial tips, refer to the ASIC consumer website at www.moneysmart.gov.au

Appointing an independent approved auditor

You must appoint an independent approved auditor to audit the fund each year. An approved auditor will:

- examine your fund's financial statements
- assess your overall compliance with the super laws.

An approved auditor must be a registered company auditor or a member of certain professional organisations. They need to follow professional auditing standards that require the audit to be conducted independently. An SMSF professional may help you find an approved auditor.

Before the annual audit, you or your SMSF professional must prepare information about your accounts and transactions for the previous income year. This information is then sent to the approved auditor.

The auditor will provide you with a letter of engagement confirming they accept the appointment and the scope of the audit.

You must give the auditor any further documentation they request so they can audit your fund.

Once the approved auditor has completed your fund's audit, they will provide you with:

- an audit report
- a management letter that summarises the findings of the audit and any action taken or proposed by the trustees.

You need an auditor's report before you lodge your fund's SMSF annual return. The law requires that you appoint your auditor at least 30 days before the annual return is due to be lodged. To ensure you lodge on time, allow enough time for your auditor to conduct the audit.

The auditor will notify us if they:

- find you have breached certain super laws
- have concerns about your fund's financial position.

Make sure your auditor is independent of your SMSF

Auditors must be independent and free from bias, personal interest and association. They may not be able to accept an audit if their independence is threatened. Independence cannot be achieved if the auditor:

- becomes the trustee or director of a corporate trustee, or a member of the fund
- is or becomes a relative or close associate of a trustee, or director of a corporate trustee and a member of the fund
- has personally prepared the accounts and statements for the fund and year being audited.

For more information about who can be an approved auditor, and their duties and responsibilities, refer to www.ato.gov.au/smsf – 'In detail' – 'Print publications' and select 'Running a self-managed super fund' (NAT 11032).

Check your progress

Use this checklist each year to make sure you meet your annual responsibilities.

The trustees of your fund must:

- ☐ ensure the fund's record-keeping is up to date in preparation for the annual audit and lodgment of annual returns – for example, if you need an actuarial certificate, ensure this is obtained before you lodge your annual return
- ☐ organise for your fund's annual financial statements to be prepared (statement of financial position and operating statement)
- ☐ make sure an independent approved auditor is appointed to audit the fund
- ☐ lodge the fund's annual return and report contributions made on behalf of the fund's members to us by the due date
- ☐ pay the supervisory levy and the fund's income tax liability when due
- ☐ lodge a business activity statement with us by the due date (if your fund is registered for GST)
- ☐ review your fund's trust deed and investment strategy and update them as required.

You must lodge an annual return for the income year in which you set up your fund. As part of this return, you must report contribution information to us for all members every year, including those members with nil contributions.

To avoid penalties, make sure you understand and comply with your annual duties and responsibilities.

Also remember that your fund status will not be updated on Super Fund Lookup to 'Complying' until you have successfully lodged your first annual return and we issue you with a notice of compliance.

More information

Get the latest SMSF information

Becoming an SMSF trustee is a commitment to saving for retirement and to do this you must be aware of regulatory and compliance issues.

Stay informed by subscribing to our free newsletter *SMSF News*, which provides updates from us and ASIC about the latest changes affecting self-managed super funds.

If you have concerns, we can provide specific advice – that is, our view on how the super laws apply to an SMSF's specific transaction or arrangement. This is in addition to our SMSF rulings and determinations, booklets, website content and other general written advice.

To apply for specific advice, visit www.ato.gov.au/smsf – 'Calculator, rates and forms' – 'Forms and instructions' and select 'How to apply for SMSF specific advice'.

For more information, refer to:

- *Thinking about self-managed super* (NAT 72579)
- *Running a self-managed super fund* (NAT 11032)
- *Winding up a self-managed super fund* (NAT 8107).

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- phone our publication ordering service on **1300 720 092**
- write to us at
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  PO Box 3100
  PENRITH NSW 2740

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If you are deaf, or have a hearing or speech impairment, phone us through the National Relay Service (NRS) on the numbers listed below:

- TTY users, phone **13 36 77** and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone **1300 555 727** and ask for the ATO number you need
- internet relay users, connect to the NRS on **www.relayservice.com.au** and ask for the ATO number you need.