

Self-Managed Superannuation Funds (SMSF)

Superannuation is a tax advantaged way of saving for retirement and makes up two of the three “pillars” of Australia’s retirement income system. A Self-Managed Superannuation Fund (SMSF) is a superannuation fund with up to six members. SMSFs are generally established by family members wishing to consolidate their family’s superannuation savings.

The members cannot be employees of other members, unless they are relatives. Each member must be a trustee of the fund or a director of the corporate trustee.

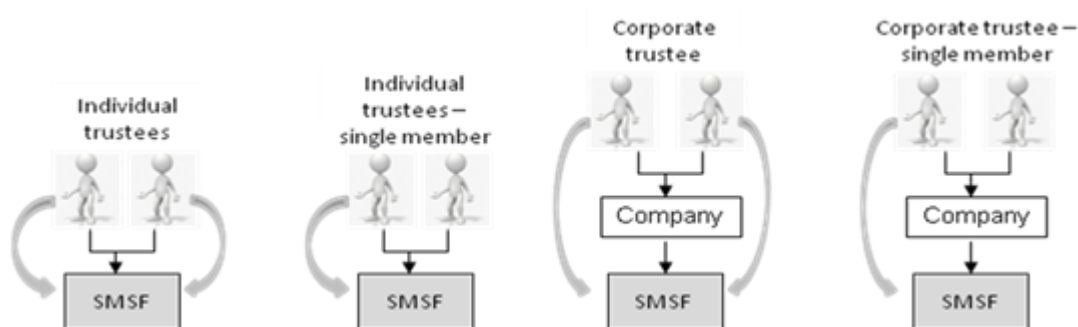
An SMSF is governed by the Superannuation Industry (Supervision) Act 1993 (SIS Act), as well as other superannuation and taxation legislation. The Australian Taxation Office (ATO) is responsible for regulating SMSFs and ensuring they comply with these requirements.

The Role of Trustee

An SMSF can either have individuals who act as the trustee or a corporate trustee. Strict rules apply as to who can be a trustee or director of a corporate trustee and each person must not be a disqualified person.

If members choose to have individual trustees, each member must act as trustee. No-one can be a trustee without also being a member unless the fund only has one member. In this case, a second person needs to be nominated as trustee.

Where an SMSF has a corporate trustee, each member must be a director of that company, and each director must be a member. If the fund only has one member, that person can be the sole director, or a second director may be appointed. If using a corporate trustee, it is generally best to use a company that has no other purpose.



A person cannot act as trustee (or director of a corporate trustee) if they are a disqualified person. This means they also cannot be a member of an SMSF. A disqualified person is someone who:

- Has ever been convicted of an offence involving dishonesty;
- Has ever had a civil penalty order under the Superannuation Industry (Supervision) Act 1993 made against them;
- Is an insolvent under administration (i.e. they are an undischarged bankrupt);
- Has been disqualified from acting as a trustee.

A company cannot act as trustee if a responsible officer is a disqualified person or the company is in liquidation.

In certain situations, a person can be a member of an SMSF but may be unable to fulfil the role of trustee. In these cases, it may be possible for another person to act in their place as either the member's legal personal representative or under an Enduring Power of Attorney (EPoA). These situations include:

- Death of the member
- The member is under age 18
- The member has lost mental capacity
- The member wishes to hand over power to their EPoA to act on their behalf

Legal advice should be sought in these situations to ensure the SIS rules are not breached and to ensure the correct process to appoint the replacement trustee is followed.

Trustees are ultimately responsible for ensuring the SMSF complies with superannuation and taxation laws. While trustees may engage professional advisers to assist with the administration and operation of the fund, responsibility for the fund's compliance remains with the trustees.

Trustee Declaration

Trustees must accept the role in writing and verify that they are not a disqualified person.

All new trustees and directors of trustee companies are also required to complete a 'trustee declaration' within 21 days of being appointed a trustee. This form is available from the ATO. It does not have to be sent back to the ATO unless requested but must be retained while the person remains a trustee of the fund or for 10 years, whichever is longer, and be made available to the regulator if requested.

Investment Strategy

The trustees are required to formulate, regularly review and give effect to an investment strategy. The investment strategy is a document that outlines the key investment guidelines to be adopted by trustees when investing the SMSFs assets.

When preparing an investment strategy, consideration must be given to the following:

- The risks in making, holding, and realising investments and the likely return to be derived, having regard to the fund's objectives and expected cash flow requirements;
- The composition of the SMSF's investments to ensure sufficient diversification (as appropriate);
- The ability to liquidate investments to meet cash flow requirements as they arise;
- The ability of the fund to discharge its liabilities as they arise (including the ability to pay benefits to members as required);
- Whether the trustees of the SMSF should hold insurance cover for the members of the SMSF.

This strategy should be documented in writing and be reviewed regularly (at least annually). Trustees should ensure that investments are consistent with the fund's documented investment strategy.

Further Information

This information is general in nature and has been provided for educational purposes only. It does not take into account your personal objectives, financial situation or needs.

The ATO has produced a range of publications, videos and other information to help trustees of SMSFs.

Trustees are encouraged to access this information and review it. Information can be accessed from the ATO's website (www.ato.gov.au).