

# Establishing a SMSF

Self-managed super funds (SMSFs) are a way of saving for your retirement.

The difference between a SMSF and other types of funds is that the members of a SMSF are usually also the trustees. This means the members of the SMSF run it for their own benefit and are responsible for complying with the super and tax laws. A SMSF is a trust structure and must be run for the sole purpose of providing retirement benefits to its members or their dependants.

## Some issues that attract members to establish their own SMSF

- control over the investments held by the fund
- access to direct property, ASX listed shares and shares held on foreign exchanges
- access to property syndicates and other investment opportunities
- potential control over annual fees and management charges

## Criteria for setting up a SMSF

- the fund must have no more than four members
- you can choose to have either a corporate trustee or individuals as trustees
- each member must be a trustee or a director of the corporate trustee of the fund
- each trustee must be a member (except for single member funds)
- a trustee cannot receive any remuneration for their services as a trustee
- trustees are required to develop and implement an investment strategy for the fund
- trustees must consider whether to purchase insurance for their members
- there must be a family relationship between members where a member is an employee of another member

## To be an eligible trustee/director you must:

- be a minimum of eighteen years of age
- not be under a legal disability (such as mental incapacity)
- not be a disqualified person, which includes:
  - having been convicted of an offence involving dishonesty;
  - have received a civil penalty order under the super laws;
  - not be an undischarged bankrupt;
  - have been disqualified by a court or regulator (such as the ATO or APRA).

## Trustee responsibility

If you establish a SMSF it is important to understand that you will be responsible for the operation of the fund and its compliance within the law. As all members are trustees of the fund, it is vitally important that obligations in this role are fully understood.

Once the SMSF is established and all trustees have signed the trustee declaration, trustees must:

- at all times act in accordance with the trust deed of the fund and in respect of the governing legislation to maintain the fund's complying status;
- at all times act honestly and exercise skill and diligence in managing the fund and acting in the best interest of all members;
- prepare, implement and regularly review an investment strategy for the fund;
- lodge an annual tax return with the ATO and have financial accounts and statements audited each year by an approved auditor;
- retain fund records for up to ten years.

Whilst operating a SMSF is complex and sounds onerous, most SMSF trustees engage professionals, such as accountants and financial advisers, to help set up and run the fund on their behalf. However, it is important to remember though that as trustee of the SMSF you retain ultimate responsibility for the ongoing compliance of the fund.

## Residency of the fund

The central management and control of the SMSF must remain in Australia. This means that the majority of trustees must be Australian residents or satisfy the temporary absence rule. Generally, the temporary absence rule requires that the majority of trustees (which includes the majority of the directors of a company that acts as trustee of the fund) must not be permanent non-residents, or temporary non-residents for a period of more than two years.

**IMPORTANT INFORMATION:** SMSF Works has taken reasonable care to ensure that the information found in this fact sheet is correct at the time of writing. The information contained in this fact sheet is a guide only. You should obtain further information specific to your situation or professional advice before making a decision. Changes in the law or ASIC's policies may occur at any time and may impact the accuracy, reliability or completeness of the information. We are not liable for any decision taken on the basis of the information shown in or omitted from this document. Copyright © SMSF Works. All rights reserved. Version 1 – November 2016

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## Is a SMSF suitable for you?

### The SMSF Works Fact Find will consider the following before making a recommendation:

Member/s current superannuation balance

Who will be involved in the investment decisions?

- a trustee who meets sophisticated Investor criteria
- a trustee who appoints a Financial Planner
- a Trustee who is self-investing

Who will be responsible for the administration and compliance?

- a recognised SMSF accountant or administration firm
- a trustee who is a member of an appropriate recognised professional body
- a trustee will undertake the administration

Will the trustee invest in direct property?

- business real property
- residential property

Will the trustee require a Limited Recourse Borrowing Arrangement to facilitate the purchase of an asset by utilising?

- related party finance; or
- bank finance

### Are these some of your objectives in establishing a SMSF?

- you agree that you are comfortable with the requirements and responsibilities of being a trustee
- you believe the costs will be cheaper than your existing retail or industry fund
- you want full control of your assets
- you have an interest in managing your own superannuation affairs
- you are considering asset protection and will appoint a corporate trustee to reduce individual liability

- you are considering broader life insurance issues
- you are considering estate planning issues and possible inclusion of children into the fund
- you want to make an in specie transfer into your SMSF
- you want to take advantage of the current reserving provisions.

### Something else to consider:

- Who is going to complete your fund's annual accounts and audit?
- Who is going to make application for the funds ABN and TFN?

If SMSF Works is your nominated service provider we will take care of all these matters on your behalf. Should you elect SMSF Works as your end of year service provider you will need to complete the appropriate trustee disclosure form. This will provide us with the necessary authority to make application for the fund ABN, TFN and election to become a regulated superannuation fund.

### Documentation

SMSF Works can assist in the preparation of documentation for the establishment of a SMSF inclusive of:

- indexed superannuation fund folder
- trust deed (in duplicate)
- trustee declarations
- trustee consents to act
- trustee resolutions
- membership applications and TFN declarations
- pro forma binding death benefit nominations
- product disclosure statement
- technical notes and guidelines on administrative procedures
- technical support

**The above information is of a factual nature only and should not be used or seen as specific advice. From 1 July 2016, anyone providing personal advice must be licensed to do so with the advice being presented in a written Statement of Advice (SoA). For further information please contact your adviser or [info@smsfworks.com.au](mailto:info@smsfworks.com.au)**

**Other Factsheets on various SMSF topics are available on our website at [www.smsfworks.com.au](http://www.smsfworks.com.au)**

08/17

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