



CHECKLIST OF TRUSTEE RESPONSIBILITIES

This checklist (provided by the ATO) highlights some of the more important rules under the Superannuation Industry (Supervision) Act 1993 (SIS Act) and the Superannuation Industry (Supervision) Regulations 1994 (SIS regulations) that you, as a trustee, must comply with. The ATO recommends that you consult the checklist regularly to ensure you are complying with all requirements in running your self managed fund. If the ATO identifies that you have contravened your legislative requirements, you may be penalised and lose your tax concessions.

All trustees must be able to answer the following questions in relation to their fund.

Trust deed

My fund's trust deed must:

- be properly executed
- state the name of the fund
- include a statement that the fund must appoint a corporate trustee or that the sole or primary purpose of the fund is to provide old age pensions.

It also sets out:

- who the trustees are
- how trustees are appointed and how they can be removed from the fund
- the powers of the trustees

Deeds may also cover:

- that the members agree to act as trustees
- confirmation that the trustees are not 'disqualified persons'
- that trustees cannot accept payment for services as trustees
- paying benefits to members
- what contributions the fund can accept
- who can be members
- winding up the fund.

Overall:

- I have read and understand my trust deed
- I know the deed sets out the rules that all the trustees of the fund must comply with.

! As a trustee, you are bound by your deed and responsible for any contravention of the rules set out in the deed. For these reasons, it is very important that you know the contents of the deed.

Trustees and members

My fund is a self managed superannuation fund because it meets all these requirements:

- there are fewer than five members in the fund
- all members of the fund are trustees of the fund (or directors of the trustee company)
- each individual trustee of the fund, or director of the trustee company, is a member of the fund
- no member of the fund is an employee of another member of the fund, unless those members are related
- no trustee of the fund receives any remuneration for their services as a trustee.

OR, for single member funds:

- no trustee of the fund receives any remuneration for their services as a trustee
- the member is the sole director of the trustee company
- the member is related to the other director of the trustee company (and there are only two directors of that company)
- the member is not an employee of the other director of the trustee company (and there are only two directors of that company)
- the member is one of only two trustees, of whom one is the member and the other is a relative of the member, or
- the member is one of only two trustees and the member is not an employee of the other trustee, and
- no trustee of the fund receives any remuneration for their services as a trustee.

There are some exceptions to these general rules, for example, where a member is under a legal disability.

Electing to be regulated

- An election that the SIS Act is to apply to the fund was lodged with the Tax Office within 60 days of establishing the fund.

A fund must elect to be a regulated superannuation fund and comply with the requirements of the SIS Act to ensure it is a complying superannuation fund. If it does not, the fund may not receive concessional tax treatment and/or other sanctions may be imposed on the trustees of the fund for contravening the SIS Act where the fund is a regulated superannuation fund.

Tax file number

- The fund has its own tax file number.

Australian business number

- The fund has its own Australian business number (ABN).

Although it is not compulsory that your fund has its own ABN, it may be beneficial to the fund to obtain an ABN.

Separate bank account

- A separate bank account has been opened so that money belonging to the fund can be kept separate from accounts of the members, the trustees and related employers (employer-sponsors).

This is very important to prevent the fund contravening the SIS Act rules and also assists trustees in preserving and protecting their retirement income.

Accepting contributions

- The trustees are aware of the SIS Act rules that relate to gainful employment, and age restrictions for accepting contributions.
- The trustees are aware that funds can accept contributions only in accordance with their fund's deed. The deed can also impose restrictions on the fund's ability to accept contributions so trustees need to decide what contributions they wish to accept and to ensure the fund's deed allows those contributions to be accepted.
- The trustees are also aware they cannot accept contributions from related parties in the form of assets other than money (known as 'in specie' contributions), except assets that are expressly allowed to be acquired from related parties under the SIS Act.

According to my trust deed, the fund:

- can accept contributions from a member's employer
- can accept contributions from members
- can accept rollover payments
- can accept contributions in respect of a member's non-working spouse
- can accept contributions in respect of minors.

Investment strategy

My fund has a medium to long term investment strategy that considers:

- a wide range of investment possibilities, including such things as:
- cash-based, low-risk investments
 - growth investments, for example, shares
 - combinations of investment types
- the return on investments compared with risks involved
- the ease of converting assets to cash in order to meet payments due by the fund
- members' ages and individual retirement benefit needs
- overall, the aim of my fund's strategy is to increase members' benefits over time.

Contravention of the requirement to have an acceptable investment strategy can result in the trustees being fined or sued for loss or damages. The fund can lose its compliance status and, as a result, its concessional rate of tax.

Investing

The assets of the fund are kept separate at all times from those of:

- the members
- the trustees
- related employers.
- Each member has a separate account in the fund.
- The fund's accounting and banking records are kept entirely separate from those of members/trustees/employers.
- All transactions by the fund are conducted on a strict commercial basis.
- The fund can demonstrate that market value has been paid and received on all transactions.

These requirements are very important to prevent the fund:

- contravening the sole purpose test, and
- exposing the members' retirement benefits to unnecessary risk.

Investment restrictions

The trustees can demonstrate that they have not:

- lent money to or provided financial assistance using the resources of the fund to a member or member's relative
- borrowed money
- acquired assets from 'related parties' of the fund. Related parties include all members of the fund and their associates and all employer-sponsors of the fund and their associates
- leased, loaned or invested more than 5% of the fund's total assets in related parties of the fund. These assets are known as 'in house assets'.

Record keeping

Wherever possible, responsible accounting practices will be adopted by the trustees, such as:

- joint signatories to signing cheques
- separating of accounting functions, for example, receipts and payments
- segregation of duties

Trustees must keep the following records for at least five years:

- accurate and accessible accounting records that explain the transactions and financial position of the fund.
- an annual operating statement and an annual statement of the funds financial position
- copies of annual returns lodged

Trustees must keep the following records for at least 10 years:

- minutes of all meetings
- records of changes of trustees
- records of changes of directors, if corporate trustees
- written consents by members to be appointed as trustees

Penalties apply if trustees fail to keep the records listed above for the required period.

Paying a benefit

The trustees:

- will pay benefits only in accordance with the SIS Act, SIS regulations and the trust deed of the fund
- are aware that the SIS Act sets payment standards based on events such as reaching a certain age and termination of employment, and can place restrictions on how a benefit can be paid.

All paperwork in relation to the following will be completed:

- eligible termination payments (ETPs)
- withholding tax from ETPs and superannuation pensions and annuities and remitting the tax to the Tax Office
- reasonable benefit limits.

Benefits should be checked for accuracy before payment. The payment standards of the SIS Act work with the sole purpose test and the preservation rules to ensure monies are paid to members only in appropriate circumstances.

Annual requirements

The trustees will:

- appoint an approved auditor to examine the records at the end of the financial year
- lodge the combined income tax and regulatory return (Form F) with the Tax Office by the due date
- pay the supervisory levy and the fund's tax liability when due
- comply with surcharge requirements.

There are penalties for failing to meet the annual requirements listed above.

Tax matters

The trustees will keep records of:

- deductions claimed for administrative and operating expenses of the fund
- sales/purchases of assets for capital gains tax purposes
- tax file numbers of members
- deductions claimed for the provision of death and disability benefits for members.

FACT SHEETS AVAILABLE ON THE TAX OFFICE WEBSITE

- contact the Superannuation Infoline on 13 10 20 for the cost of a local call
- visit the ATO superannuation website at www.ato.gov.au/super

Self managed superannuation funds (SMSFs)

NAT No.	Product name
2057	Introduction to superannuation—for self managed superannuation funds
2058	What is a self managed superannuation fund?
2059	Setting up a self managed superannuation fund
2060	Duties of trustees
2061	Sole purpose test
2062	Acceptance of contributions
2063	Investment strategy and investment restrictions
2064	Administrative obligations
2067	Election and return lodgment—APRA or the Tax Office
2069	Checklist for self managed superannuation funds (long version)
2070	Preservation rules
2071	Payment of benefits
4591	Actuarial certificates
6733	Allocated pension payments
6732	Allocated pension deductions and rebates
6730	Tax implications for allocated pensions
6731	Payment for allocated pensions
6734	What is an allocated pension?
6854	Checklist for self managed superannuation funds (short version)
7236	Penalties
9786	Self assessing superannuation providers (surcharge)
10417	Illegal arrangements to withdraw your superannuation
11418	Eligible termination payment roll-overs post-June 1983— untaxed element component

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