



Super
Concepts

How to avoid 'Popular' SMSF compliance breaches.

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What you need to know



The content of this presentation has been prepared to provide you with general information only. It is not intended to take the place of professional advice and you should not take action on specific issues in reliance on this information. In preparing this information, we did not take into account the investment objectives, financial situation or particular needs of any particular person. Before making an investment decision, you need to consider (with or without the assistance of an adviser) whether this information is appropriate to your needs, objectives and circumstances. You should obtain a copy of the relevant Product Disclosure Statement (PDS) before making a decision to invest in any financial product.

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This session will cover

- Fund trusteeship and the fund's trust deed,
- Requirements for an investment strategy,
- Non-arm's length income and expenses,
- Underpaying pensions, and
- Documentation to keep the auditor happy.

2019 SMSF Annual Return – section 6

- Part A Qualifications
- Part B Qualifications

| | | | | | | | | | | | |
|---|----------|----------------------|--------------------------|-----|--------------------------|----------------------|---|----------------------|----------------------|----------------------|----------------------|
| Date audit was completed | A | <input type="text"/> | <input type="text"/> | / | <input type="text"/> | <input type="text"/> | / | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | | <small>Day</small> | | | <small>Month</small> | | | <small>Year</small> | | | |
| Was Part A of the audit report qualified? | B | No | <input type="checkbox"/> | Yes | <input type="checkbox"/> | | | | | | |
| Was Part B of the audit report qualified? | C | No | <input type="checkbox"/> | Yes | <input type="checkbox"/> | | | | | | |
| If the audit report was qualified, have the reported issues been rectified? | D | No | <input type="checkbox"/> | Yes | <input type="checkbox"/> | | | | | | |

Why include Part A Qualification?

- Assists ATO risk profiling of SMSFs
- Accounts not free from material mis-statements:
 - Private company and unit trust investments lack of audit evidence
 - Valuations of real property and other assets not at market value
 - No audit evidence of opening balances
 - Unsubstantiated transactions
 - No evidence to support rollovers

Ryan Wealth Holdings Pty Ltd v Baumgartner [2018] NSWSC 1502

Qualifying opening balances

- Access to audit evidence to prove the financial report is free from material mis-statement
- Confidence that opening balances are correct

Avoiding qualification:

- Test cash accounts and material assets and any liabilities
- Consistency with previous year closing balances
- Taxable/tax free components
- Preservation components
- Carry forward losses

Qualifying assets held by custodian

- No audit report on controls – audit evidence not available
- No audit report available

Trusteeship and the fund's trust deed

Need to know provisions of the trust deed

- Appointment and removal of trustee
 - Who appoints and removes the trustee or director?
 - How is the appointment or removal made?
- Amendment to the fund's trust deed
 - Do the trust deed and rules have a pedigree
- Trustee minutes and resolutions
 - Requirement for minutes and resolutions

Appointment of Trustee

3.1.1 The Members of the Fund agree to be bound by this Deed.

3.2 Additional Members

3.2.1 The Trustee may appoint a person as an additional Member of the Fund if he or she has completed and signed a Member application form, or if the Trustee has otherwise accepted the person as a Member.

3.2.2 If the Trustee is a constitutional corporation, then the additional Member agrees to do all things necessary to become a director of the Trustee including by providing an executed consent to act in the required form and such other documents as are required by Superannuation Law.

3.2.3 If the Trustees are individuals, the additional Member must become a Trustee and must provide an executed form of consent and such other executed documents as are required by Superannuation Law for that purpose. This must occur when the person becomes a Member, unless the additional Member is unable to become a Trustee or director of a Trustee under Superannuation Law.

3.2.4 On written request by the Trustee, a Member or applicant for Membership of the Fund must supply the Trustee with information that the Trustee thinks necessary for any purpose. This extends to submitting to a medical examination by a doctor who is acceptable to the Trustee.

3.2.5 If a Member fails to do so, the Trustee may refuse to accept further contributions in respect of that Member may decline to accept the applicant as a Member.

3.2.6 Subject to clause 3.7, the Trustee must not accept a person as an additional Member of the Fund unless each of the following conditions is met:

- (a) The total number of Members would be no more than 4;
- (b) The person is not disqualified from being a Trustee or a director of the Trustee of the Fund;
- (c) The person is not in an employment relationship with another Member of the Fund except another Member who is also a relative of that person; and

Appointment and dismissal of Trustee

7 Trustee

7.1 Removal and appointment of Trustee

- (a) Any person permitted to do so by Superannuation Law may act as a Trustee or as a director of a Corporation which is the Trustee.
- (b) The Members may, at any time, remove any Trustee from office or may appoint an additional or substitute Trustee of the Fund in writing.
- (c) A trustee holds office until:
 - (1) the Trustee becomes a disqualified person under the Superannuation Law or is otherwise disqualified from that office by operation of law;
 - (2) the Trustee is removed from office by the Regulator or by the Members in accordance with paragraph (b);
 - (3) the Trustee retires from office by giving 30 days' written notice to the Members (or such lesser period as the Members may agree); or
 - (4) if the Trustee is a natural person, that person dies or becomes of unsound mind.
- (d) Despite anything to the contrary in this Deed, the composition, appointment and removal of a Trustee must comply with the Superannuation Law, and any Trustee who holds office must not act in any manner which may prejudice any existing or potential taxation concessions of the Fund under the Superannuation Law.
- (e) A retiring Trustee must transfer the assets of the Fund and deliver the books and records relating to the Fund to the new or remaining Trustee.

Death Benefit Nominations

- Nomination to be consistent with the fund's trust deed
- Witnesses
- Should be a clear direction to the trustee

Investment Strategy

- Required to have an investment strategy
- Must be more than a mere statement of the types of investments your SMSF will invest in.
- Needs to explain why the fund has made the investments.
- How does the strategy provide benefits to each fund member on retirement or will provide it to their dependants after the member's death.
- Needs to consider the risks in making, with the superannuation law. Trustees need to consider the objectives of the fund and any cash flow requirements plus the members' insurance requirements.

Investment Strategy - examples

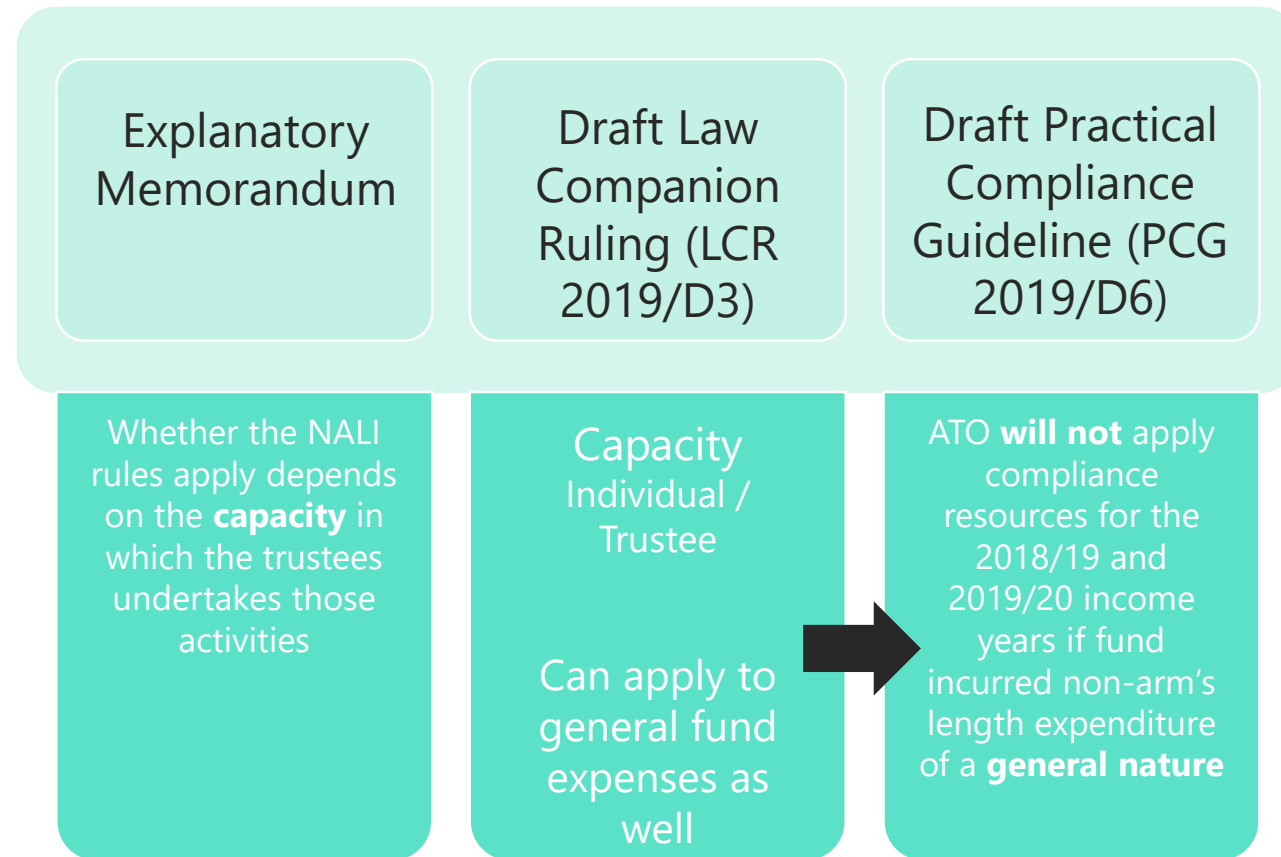
- The fund's asset allocation is consistent with the investment objective of the fund and the requirement that the asset mix is diversified across asset classes. However, given the long-term investment horizon of members of 40 years and lack of assets external to superannuation, the allocation of assets will have a growth bias to maximise capital growth.
- The trustees recognise the higher levels of risk by investing a high proportion of the fund in growth assets and the associated volatility. The high levels of volatility are considered to be compensated by the greater likelihood of higher returns and growth in the longer term. Investment risk is considered to be reduced to a satisfactory level by investing across a range of industries and sectors.

Non-arm's length income and expenses

From 1 July 2018, income taxed as non-arm's length income if:

...exceeds amount expected from an arm's length dealing

or in gaining or producing it, the entity
incurs a loss, outgoing or expenditure
that is **less than** the amount expected from
an arm's length dealing.



Evidence?

- SMSF trustees who are providing professional services to their fund using the resources of their business and there is a **direct relationship** to a particular amount of ordinary or statutory income derived by the fund (real estate agents, trade persons, professional art dealers, lawyers, financial planners)
- Services provided by **related entities on non-arm's length terms** and there is a **direct relationship** to a particular amount of ordinary or statutory income derived by the fund.

Limited Recourse Borrowing Arrangements

- Contract for purchase not in name of holding trustee or bare trustee
- Loan in the name of the holding trustee or bare trustee
- Retaining asset in the holding trustee or bare trustee
- Joint purchase of property by two SMSFs
- Change in the single acquirable asset
- Safe harbour issues

Acquisitions of assets from Related Parties

Listed Securities
Shares, units, bonds
listed on approved Stock
Exchange

Certain assets that are
not in-house assets even
though associated
entities (13.22C
trusts/companies)

In-house asset provided
the acquisition does not
cause the level of 'in-
house' assets to exceed
5%

Business real property
Land and Building used
wholly in a business

Underpaid pensions

Estimate
provided in July
based on
unreconciled
accounts

Accounts and
returns lodged
in May

Client continues
on original
information

Underpayment
arises



SMSF education services



SMSF Specialist

Industry-recognised.
Comprehensive. Confers
RG146 SMSF compliance.



SMSF Masterclass

Become expert in a key
area of self-managed
superannuation.



SMSF Online Training

Self-paced online learning
for SMSF proficiency and
CPD points.

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Thankyou