



ASIC

Australian Securities & Investments Commission

REPORT 575

SMSFs: Improving the quality of advice and member experiences

June 2018

About this report

ASIC has undertaken a large research project to examine:

- member experiences in setting up and running a self-managed superannuation fund (SMSF) (member research); and
- whether advice providers are complying with the law when providing personal advice to retail clients to set up an SMSF (advice review).

This report summarises the findings of our work. It also provides:

- a comprehensive overview of SMSF market characteristics; and
- practical tips that advice providers can use to improve the quality of SMSF advice they provide to clients.

Note: For a comprehensive report on the member research, see [Report 576](#) *Member experiences with self-managed superannuation funds* (REP 576).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Acknowledgement

ASIC wishes to thank all of the SMSF members who participated in the member research. We are grateful to them for providing their time to give us a richer understanding of the experience of setting up and running an SMSF.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Appendix 1: Tips for advice providers

416 Listed below are all the tips for advice providers provided in Section D of this report.

Role and obligations of SMSF trustees

- 1 The ATO regulates SMSFs and provides useful information on its website about the obligations and duties of trustees in managing an SMSF.⁹⁹ As good practice, you should:
 - (a) direct clients to the relevant pages on the ATO website;
 - (b) provide clients with a copy of key ATO publications with their SOA to ensure that they understand their obligations; or
 - (c) encourage clients to complete one of the ATO's free approved online education courses.¹⁰⁰
- 2 You should explain to clients the duties and obligations that each trustee has to comply with under the law.
- 3 You should explain to clients that, within 21 days of becoming an SMSF trustee, they will need to complete the ATO's trustee declaration.
- 4 You should discuss with clients the ATO's trustee declaration, explain each obligation and duty, and allow clients to ask any questions about their obligations.
- 5 If you do not adequately understand the role and obligations of SMSF trustees, it is inappropriate for you to advise clients about SMSFs.

Suitability of an SMSF structure

- 6 You should discuss the client's superannuation balance and whether it is likely to be cost-effective for the client to set up an SMSF.
- 7 You should discuss the likely costs associated with running an SMSF—including the set-up costs, the cost of winding up, and the ongoing costs of investment management, compliance and advice—and explain these to the client before making a recommendation to set up an SMSF. This information is contained in [INFO 206](#).
- 8 Before recommending an SMSF, you should consider the client's ability and willingness to manage the fund and meet their trustee obligations on an ongoing basis.
- 9 Be aware of 'red flag' indicators that may suggest an SMSF will not be suitable for a client—including, but not limited to the following:

⁹⁹ ATO, [Self-managed super funds](#).

¹⁰⁰ ATO, [Approved education courses](#).

- (a) the client has a low superannuation balance, and would have a limited ability to make future contributions;
 - (b) the client wants a simple superannuation solution;
 - (c) the client wants to delegate all of the running of the SMSF to a paid advice provider;
 - (d) the client wants to delegate all of the investment decision making to someone else;
 - (e) the client does not have a lot of time to devote to managing their financial affairs;
 - (f) the client has little experience making investment decisions;
 - (g) the client, or suggested trustee, is an undischarged bankrupt or has been convicted of an offence involving dishonesty (as such, persons are prohibited from acting as a trustee); and
 - (h) the client has a low level of financial literacy.
- 10 You should explain to clients approaching the pension phase that there may be a point at which the SMSF may cease to be cost-effective because fixed costs will remain constant or increase while the balance of the fund diminishes.
- 11 Where appropriate, you should discuss SMSF succession planning issues with clients (this will be more relevant for older clients). Some key questions to discuss include the following:
- (a) For clients who are individual trustees, what will happen if one of the trustees dies?
 - (b) If one trustee (the controlling trustee) is more actively involved in the day-to-day management of the SMSF, what will the less active trustee do if the controlling trustee is unable to manage the SMSF?

Risks of an SMSF structure

- 12 You should be familiar with the risks of an SMSF structure, as set out in [INFO 205](#).
- 13 You should warn clients looking to set up an SMSF about the lack of Government compensation available to SMSFs. This information will help clients properly weigh up whether an SMSF structure is right for them.
- 14 You should warn clients that SMSF trustees and members do not have access to the SCT to resolve complaints.
- 15 You should explain the advantages and disadvantages of setting up an SMSF with a corporate trustee versus individual trustees, and provide clients with relevant ATO publications via hard copy or web links.
- 16 If the client's proposed membership structure of an SMSF is unusual, you may need to spend more time discussing the duties and obligations of trustees, the risks associated with the membership structure, and the importance of having a well-documented, specific investment strategy, and a trust deed that contains dispute resolution clauses.

- 17 You should reiterate the role and responsibilities of trustees, and explain that, even if one trustee is less actively involved, they are equally liable for complying with the trustee obligations under superannuation and tax laws.
- 18 When you recommend an SMSF to a client, you should discuss their insurance needs. This will often involve discussing:
 - (a) their existing insurance cover;
 - (b) the level of insurance cover they will need in the future;
 - (c) the costs and options of maintaining, increasing or decreasing (as appropriate) their existing insurance cover through an SMSF;
 - (d) whether they have any health issues that may affect their ability to get insurance cover;
 - (e) the advantages and disadvantages of retaining a portion of their APRA-regulated superannuation for insurance purposes (if considered appropriate); and
 - (f) the impact of the insurance recommendation on their SMSF balance.
- 19 If you identify that a client needs advice on insurance, you must consider and advise the client on their insurance needs before recommending an SMSF be set up. If you do not have the necessary expertise to provide insurance advice, you should notify the client and refer the client to an advice provider who has the expertise to provide the advice.
- 20 If you are operating under a limited AFS licence, you should carefully check what advice you are or are not able to provide: see [Information Sheet 227](#) *What can limited AFS licensees do* (INFO 227).

Investment strategy

- 21 You should explain to clients the 'sole purpose' test and the requirement for investments to be made and maintained on an arm's length basis.
- 22 When you are advising clients on their SMSF investment strategy, you should explain the benefits of asset diversification and investing across a number of asset classes (e.g. shares, real property and fixed interest products) in a long-term investment strategy.
- 23 You should explain to clients that some investments are restricted and that it is the trustee's obligation to ensure that the SMSF does not make restricted investments.
- 24 You should explain to trustees that they must regularly review the fund's documented investment strategy to ensure that it suits the needs of members.
- 25 If you are recommending that an SMSF be set up to invest in a single asset class, you should ensure that the SOA adequately documents the basis for the advice in light of the client's financial situation, needs and objectives. In particular, you should set out why the investment is appropriate (rather than a diversified investment portfolio), and whether the investment will generate a sufficient return to fund the client's

retirement needs (and, if not, what the exit strategy is and any costs or risks associated with this exit strategy).

- 26 You should explain to clients that the SMSF investment strategy is likely to change as members approach the retirement phase and their needs and circumstances change.
- 27 If a client has a preference for a property investment, you should consider whether the property investment is appropriate.
- 28 If you are recommending a property investment, you should discuss with the client:
 - (a) the needs and circumstances of the fund's members (e.g. their age and retirement needs);
 - (b) if the recommendation involves an investment loan, how long it will take for the client to repay the loan;
 - (c) the high upfront costs of purchasing the property (e.g. stamp duty, loan fees, estate agent fees);
 - (d) the client's ability to repay the loan if an unexpected event occurs (e.g. the client becomes unemployed for a period of time);
 - (e) how the client's retirement will be funded by the property investment (i.e. through sale of the property or through rental income);
 - (f) how likely it is that the property can be sold quickly (i.e. whether it is in a high demand area); and
 - (g) what the client will do if the property is not rented for a period of time.

Note: If the investment property is not the SMSF's sole asset, you may need to spend less time discussing the above issues.

Alternatives to an SMSF structure

- 29 Before recommending an SMSF to a client, you should consider whether an APRA-regulated fund will meet the financial situation, needs and objectives of the client. Many APRA-regulated funds now offer a DIY investment option.
- 30 APRA-regulated funds may be more cost-effective for clients than an SMSF, depending on the size of the client's superannuation balance, and the extent to which the SMSF trustee(s) would engage external professionals to undertake administrative or other functions.
- 31 Setting up an SMSF, which then invests through an investment platform, may not be as cost-effective for clients as becoming a member of a public offer investment platform directly.

Record keeping

- 32 You should clearly demonstrate in the client file the reasons or objectives that prompted the client to seek advice, and the outcomes the client wants to achieve. This should be clear and recorded in the client's own words in the client file and in the SOA.

- 33 You should ensure that, together, the client file and the SOA demonstrate:
- (a) the subject matter of the advice sought by the client (both explicit and implicit);
 - (b) the subject matter and scope of the advice being provided; and
 - (c) why the subject matter and scope are suitable for the client and consistent with the client's objectives, financial situation and needs.
- 34 You must not reduce the scope of advice to exclude critical issues that are relevant to the subject matter of the advice sought. Where the subject matter of the advice is limited in scope at the request of the client, you should record this carefully in the client file, including the client's reasons for the request. This should also be detailed in the SOA.
- 35 If the advice is relatively complex, you may need to make inquiries that are additional to those you would normally make, and demonstrate evidence of this in the client file. We consider these issues are particularly relevant to SMSF advice.
- 36 You must conduct a reasonable investigation into products that will meet the client's needs and objectives. The level of inquiries you need to make will vary according to the complexity of the advice, including the financial products and strategies recommended. Complex financial products and strategies necessitate more extensive inquiries. The decision to move from an APRA-regulated fund to an SMSF is a significant decision for clients. Therefore, you should demonstrate in the client file that you have undertaken reasonable inquiries into the financial products and strategies that could meet the client's needs and objectives.
- 37 When recommending a financial product, you should demonstrate in the client file:
- (a) whether it is reasonable to recommend a financial product, taking into account the reasons why the client sought advice;
 - (b) that you have considered strategic advice that may form the basis of the financial product recommendations;
 - (c) that you have considered and investigated financial products, taking into account:
 - (i) the client's existing financial products;
 - (ii) financial products that might meet the client's needs and objectives (including the recommended financial products);
 - (iii) why the recommended financial products meet the client's needs and objectives when compared with other products considered (including the client's existing products); and
 - (iv) any research you have used.
- 38 Superannuation switching advice must be appropriate for the client. In addition, a superannuation fund often contains insurance cover that should always be considered and investigated when you provide switching advice. The client file should demonstrate that you have taken the steps described above.