




Related parties
 Who are they?
 And just as importantly, who aren't they?
 And why do we care?

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#NC2018 


Leigh Mansell

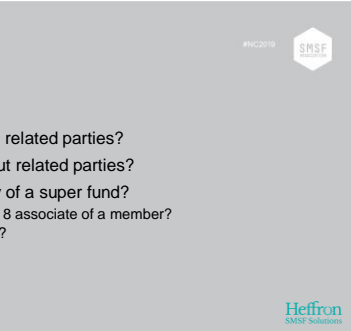
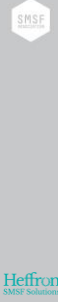
Leigh is a Director, SMSF Technical & Education Services at Heffron SMSF Solutions, and she is intimately involved in developing the firm's range of products and services for clients (including technical and educational materials) and the provision of technical support to SMSF practitioners and their clients.

She regularly delivers presentations to SMSF practitioners around Australia and one of Leigh's greatest attributes is her ability to make complex concepts appear simple through the use of real life scenarios. Participants in previous training events have valued this practical approach highly.


She is a Chartered Accountant with over 25 years of superannuation experience and has specialised in SMSF technical support, advice and administration for almost 20 years. This gives her a unique ability to advise not only on the technical issues faced by SMSF practitioners but also the practical solutions she has developed and implemented.

Agenda

- Why do we care about related parties?
- When do we care about related parties?
- What is a related party of a super fund?
 - Who would be a Part 8 associate of a member?
 - And who wouldn't be?


Why do we care about related parties?



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<p>Fund can't acquire assets from related party (or member)</p> <ul style="list-style-type: none"> Unless an exception applies Exceptions include <ul style="list-style-type: none"> Listed securities Business real property (SMSF / SAF only) Units in widely held trusts In-house assets Assets that would be in-house assets but for an exclusion (eg 13.22C Assets) 	<p>5% limit applied to investments "in" / loans to / assets of fund leased to related parties</p>	<p>Collectables</p> <ul style="list-style-type: none"> Can't be <ul style="list-style-type: none"> leased to stored in private residence of used by related party If sold to related party must be sold at MV determined by qualified independent valuer
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Investment in a "controlled" entity vs "non-controlled" entity

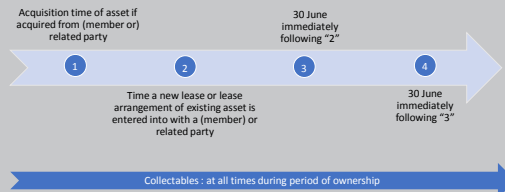
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<p>Controlled entity</p> 	<p>SMSF <u>can</u> acquire from members / RPs</p> <p>Will be an <u>in house asset</u> (5% limit) <u>unless</u> ...</p> <p>Unit trust / company meets Division <u>13.3A</u> SISR</p>
<p>Non-controlled entity</p> 	<p>SMSF <u>cannot</u> acquire from members / RPs <u>unless</u> ...</p> <p>Asset is listed securities, units in widely held trusts</p> <p><u>Even if < 5% of SMSF assets</u></p>



When do we care about related parties?

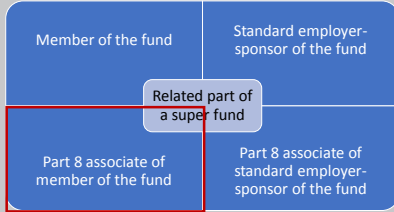
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What is a related party of a super fund?

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Part 8 associates of a member

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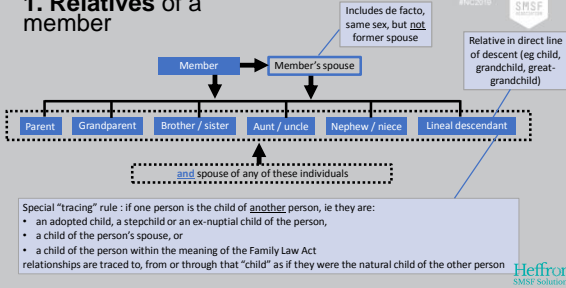


Part 8 associates of a member

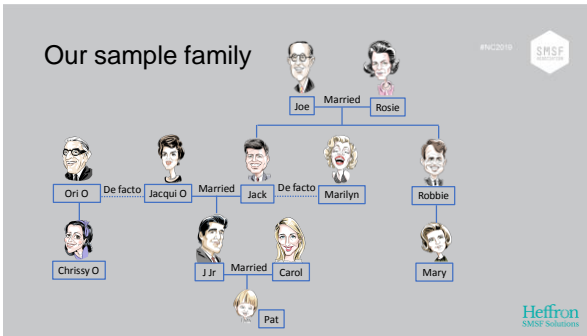
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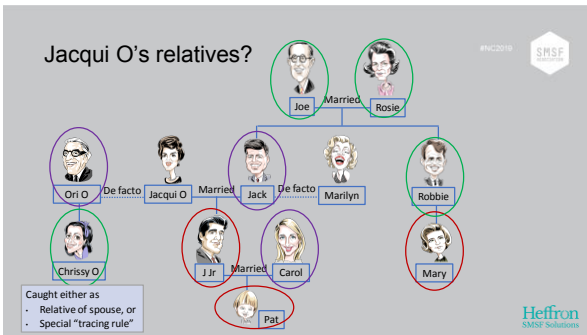
1. Relatives of a member

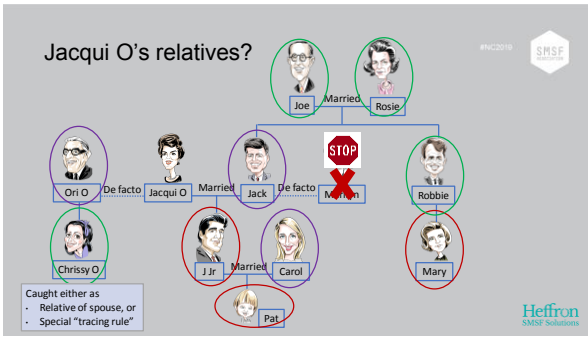


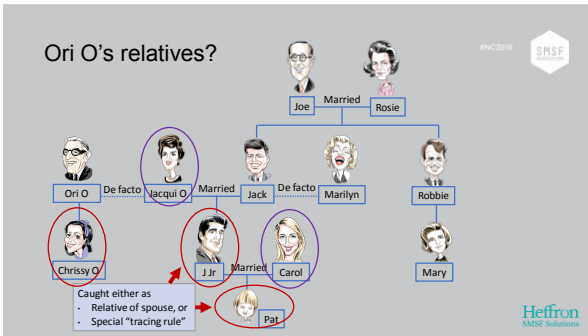
Our sample family

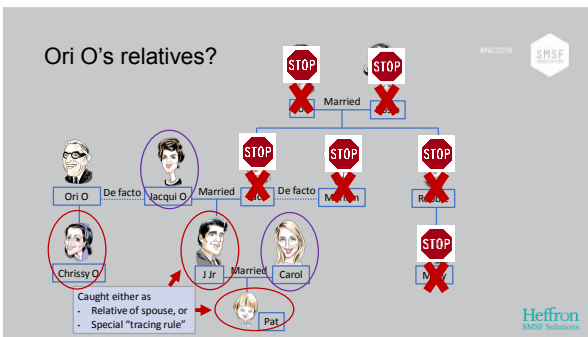


Jacqui O's relatives?









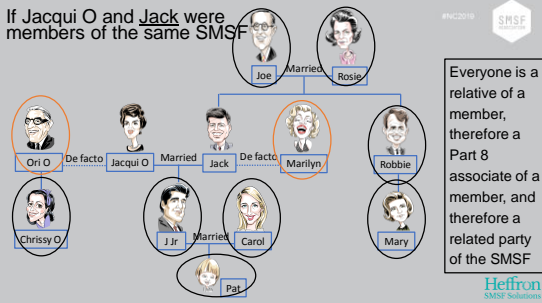
If Jacqui O and Ori O were members of the same SMSF



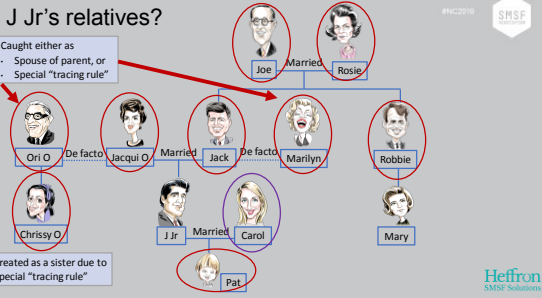
- Each of their relatives would be their Part 8 associate
 - And a related party of the SMSF
 - Marilyn is not a relative of either Jacqui O or Ori O, so she would not be a related party of the SMSF

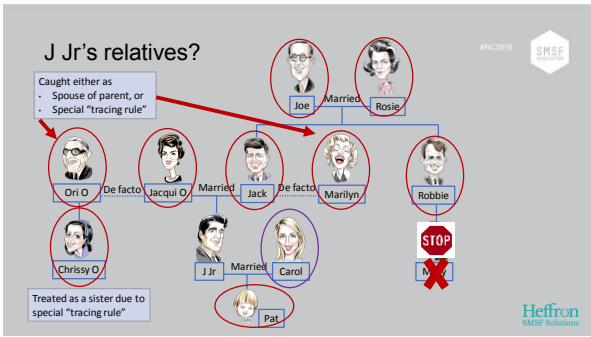


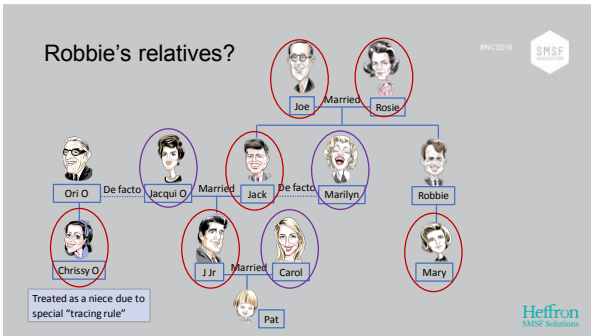
If Jacqui O and Jack were members of the same SMSF

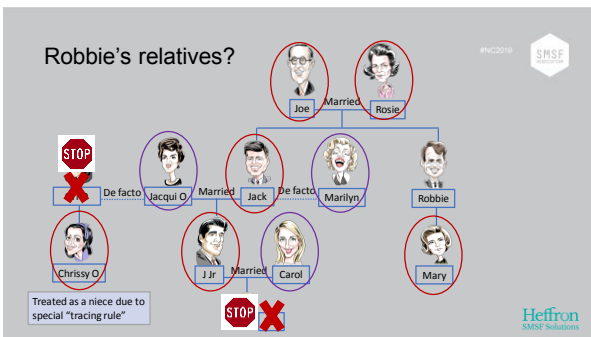


J Jr's relatives?









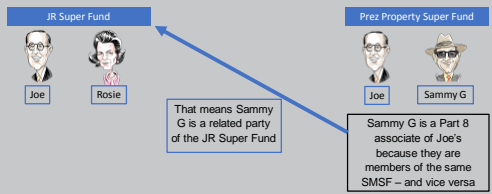
Relatives of a member



- Big tip : Remember when to stop!
 - Stick to the definition and don't cast your net any further than you need to



2. Other members of fund (if fund is an SMSF or SAF)



3. Single member SMSFs



- All directors of the corporate trustee / all individual trustees are a Part associate of the member
 - Includes "other" trustee in cases where member themselves is a director / individual trustee
 - Also includes anyone acting as director / individual trustee in place of the member
 - eg the member's LPR



4. Member is a partner in a partnership

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If a member of a superannuation fund is a partner in a partnership

- the member's partner,
- the spouse or child of the member's partner (should that partner be an individual), and
- the partnership itself

are all Part 8 associates of the member



4. Member is a partner in a partnership

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"Partnership" means

- carrying on business as partners, or
- in receipt of **income** jointly. Includes
 - Entity that owns income producing asset as joint tenants / tenants in common with member




5. "Controlled" trusts and companies

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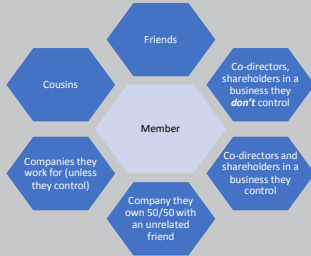
- Members together with their Part 8 associates will be considered a "group"

<p>Controlled trust</p> <p>Group has fixed entitlement to more than 50% of the income or capital</p>	<p>Controlled company</p> <p>The group can cast or control > 50% votes</p>
<p>Trustee is under an obligation or accustomed to acting on the group's wishes (eg group controls voting on the trustee company)</p>	<p>Sufficient influence - directors under an obligation or accustomed to acting in accordance with the group's wishes</p>
<p>Group can change the trustee of the trust</p> <p>Remember SMSFs are trusts – this would make member or family's SMSF a related party</p>	



Who wouldn't be a Part 8 associate of a member?

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Standard employer sponsors (and their Part 8 associates)

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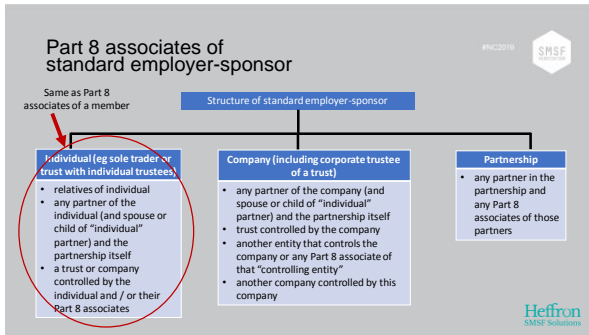
Standard employer-sponsor of a fund?

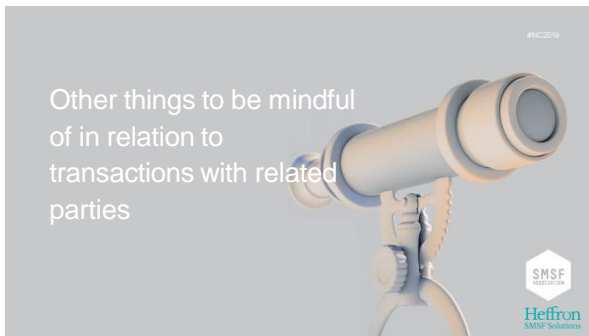
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- Employer who contributes under arrangement with the trustee (rather than under an arrangement with the members)
 - Not common in SMSFs, so most of the time do not even need to consider Part 8 associates of standard employer-sponsors
- Part 8 associate of a standard employer-sponsor depends on the structure of the employer







Regulator has special powers!

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- Regulator (ie ATO for SMSFs) has power to treat an asset that is not an in-house asset by definition
 - ie an asset that is not an investment "in" / a loan to / an asset of the fund leased to a related party as being an in-house asset
- Recent Decision Impact Statement advises ATO will consider issuing determination where SMSF enters an arrangement to acquire an asset though an interposed entity if the asset would otherwise be an in-house asset if directly held by the SMSF

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Anti-avoidance provisions



- SIS contains anti-avoidance provisions in relation to schemes designed to
 - avoid prohibition on acquiring assets from related parties
 - artificially reduce the value of in-house assets below 5% limit
- Anti-avoidance provisions apply to any person involved in the scheme
 - Including advisers, accountants etc – not just the SMSF trustee



Wrapping up



- Identifying the related parties of a super fund is critical as special rules apply to transactions between trustees and a related party of the fund
- Illegally acquired / held assets will need to be disposed of and the Regulator may apply penalties to the trustee and the fund
- Often the hardest thing with related parties is knowing when to stop drilling through the Part 8 associate rules!



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