




GETTING SMSF ADVICE RIGHT

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#NC2020




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






Neil is acknowledged as an authority on self-managed superannuation funds. In 2018 he completed the Graduate Certificate of SMSF at the Adelaide University and is an accredited SMSF Specialist Advisor™.

Neil is a regular speaker on the topic of superannuation with over 15 years' experience researching, writing and presenting to financial advisers and trustees on the technical aspects and unique strategies available to SMSFs.








Is the SMSF business model dead?

 <p>#1 Royal Commission advice failures</p>	 <p>#2 Productivity Commission report ASIC: 19 277MB SMSF are they for you?</p>	 <p>#3 ASIC enforcement activity Best Interest Duty Conflict Process</p>	 <p>#4 Declining SMSF establishment Down 20% since 2016</p>	 <p>#5 Increasing wind up 20% of Trustees considering (6% in 2013)</p>
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1. Productivity Commission, Inquiry Report - Superannuation: Assessing Efficiency and Competitiveness, no 91, December 2018 | 4. Australian Taxation Office, Self-managed super funds: A statistical overview 2016-2017, May 2019. 5. Investment Trends, SMSF Investor Report, March 2018. 6. Investment Trends, SMSF Investor Report, Industry Analysis June 2019


Learning Outcomes

-  Lessons from the Regulators
-  The "ethics" of SMSF advice
-  SMSF advice post report 575

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Lessons from the Regulator



Best Interest duty

Switching (S47D)

ASIC Information sheet 182 - When are you providing Switching Advice?


- The transfer in whole or part from one super fund to another
- The redirection of contributions from one fund to another
- What are you really telling your clients?
- Disclaimers, if the substance of your advice recommends a switch, the advice will be switching advice.

Safe Harbour

Alternative Products

- 5961b(2)(e) - Decide whether a Product recommendation is reasonable
- 5961b(2)(e)(i) - Investigate relevant Products "MAKE REASONABLE INVESTIGATION"
- 5961b(2)(e)(ii) - Assess the information you have gathered. "Methodically, Consistently and Predictably"
- Well Documented

Safe Harbour



ASIC enforcement

18-212MR, Banned 4years, Advice business with in house SMSF Admin, Failed to investigate;

- alternative strategies/products that may have been suitable
- prioritise the clients interest ahead of his own, "Motivation"

18-266MR, Banned 3years, SMSF with LRBA to invest property.

- Had not conducted reasonable investigation into products that might achieve the clients needs/objectives
- Did not investigate whether the strategy of investing in property would outperform the clients existing superannuation fund.

Report 575

575-244(a), Not conducted sufficient research into the clients existing super products before recommending an SMSF

575-244(b), Not considered the clients objective, financial situation and needs before recommending SMSF

575-245, 68% product replacement research was inadequate

575-253, 87% of files did not meet the Best Interest Duty

Is SMSF establishment an exempt service ?



575.281 when setting up an SMSF the advice provider might provide the following financial services;

- (a) Financial product Advice about the SMSF, whether to start, structure, rollover etc, or:
 (b) Arranging to deal in an interest in an SMSF (ie setting one up)

Note: in most cases SMSF advice will be Personal Advice

575.282 – we expect that when a client wants to discuss setting up an SMSF, the client in most cases will be receiving financial product advice, because

- (a) The client has an expectation of obtaining an expert recommendation about the SMSF
 (b) The definition of financial product advice is broad, ie not restricted to the set up of an SMSF, but includes Trustee structures, membership etc.

SMSF establishment – consider



What can Limited AFS licensees do?
 When are you providing Financial product advice?
 • When you give a recommendation or statement of opinion that is intended to influence about a financial product
 • Trustee structure, corporate or Individual & who should be members
 • Arranging to deal in an interest in an SMSF

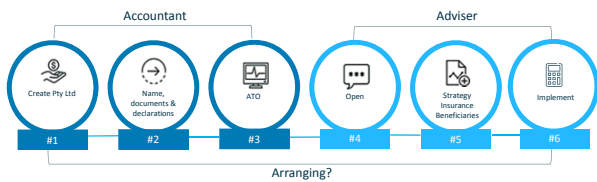


Your conduct may constitute arranging if:
 (a) your involvement in the chain of events leading to the relevant dealing is of sufficient importance that without that involvement the transaction would probably not take place



Even if NO financial product advice is provided, the service of establishing an SMSF for a client (which may include setting up a corporate trustee, sourcing a trust deed, applying for ABN/TFN and registering the SMSF with the ATO) WOULD constitute the financial service of "arranging to deal in an interest in an SMSF"

SMSF establishment process




Learning Outcomes



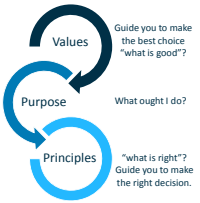

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Ethics of SMSF Advice



1. INFO 182 – What are you really telling your clients?
2. RG175.403 conflicts priority rule (S961J)
 - a) Not recommend a product or service of a Related Party to create extra revenue when benefit cannot be demonstrated.
 - c) Not over service, or create overly complex strategy to generate additional revenue
3. ASIC enforcement action 20-001 MR
Advice, SMSF admin, Inv Management + inadequate disclosure (breach of ethical standard 7)
4. 575-270, 86% of files the Advice provider appeared to have prioritised their own interests over those of the clients





Ethics of SMSF Advice






FASEAF STANDARDS

- 1** YOU MUST ACT IN ACCORDANCE WITH ALL APPLICABLE LAWS, INCLUDING THIS CODE, AND NOT TRY TO AVOID OR CIRCUMVENT THEIR INTENT (19-317MR)
- 3** YOU MUST NOT ADVISE, REFER OR ACT IN ANY OTHER MANNER WHERE YOU HAVE A CONFLICT OF INTEREST OR DUTY
- 5** YOU MUST BE SATISFIED THAT THE CLIENT UNDERSTANDS YOUR ADVICE, AND THE BENEFITS, COSTS AND RISKS OF THE FINANCIAL PRODUCTS THAT YOU RECOMMEND, AND YOU MUST HAVE REASONABLE GROUNDS TO BE SATISFIED (19-303MR)
- 6** YOU MUST TAKE INTO ACCOUNT THE BROAD EFFECTS ARISING FROM THE CLIENT ACTING ON YOUR ADVICE AND ACTIVELY CONSIDER THE CLIENT'S BROADER, LONG-TERM INTERESTS AND LIKELY CIRCUMSTANCES.


Learning Outcomes





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SMSF Advice post ASIC report 575







Suitability*




Trustee




Roles & obligations



Disclosure of risks & costs




Investment Strategy




Strategies & Contingencies


*ASIC report 337 (April 2013) – Table 1, issues to consider before setting up an SMSF

Suitability*






- Current balance (INFO 206)
- Costs, Discuss the annual costs of setting up and running an SMSF
- ASIC Red Flag indicators
- 575.Tip 29 APRA regulated alternatives to SMSF
- Give Advice. Don't just take instructions



- Willingness & Ability to Act as Trustee
- Commit the time to management of the SMSF,
- Financial literacy to understand complex financial structures and risks
- Trustee structures, advantages/disadvantages



- Contingency and succession plans
- What will happen if one trustee dies or is disabled
- Have you discussed an Exit Strategy?
- 575.192, 30% had No Exit strategy
- Insurance needs

*ASIC 19-277MR – Self Managed Super Funds, Are they for you?

ASIC SMSF red flags

1. the client, or suggested trustee, is an undischarged bankrupt or has been convicted of an offence involving dishonesty.
2. the client has a low level of financial literacy.
3. the client has a low superannuation balance, and would have a limited ability to make future contributions;
4. the client wants a simple superannuation solution;
5. the client does not have a lot of time to devote to managing their financial affairs
6. the client has little experience making investment decisions;
7. the client wants to delegate all of the running of the SMSF to a paid advice-provider;
8. the client wants to delegate all of the investment decision making to someone else;

Trustee

Smarts

1. ASIC Report 337 – Assess the ability of the client to understand and perform trustee role, if not do not recommend SMSF.
 - Direct to resources on ATO website
 - SMSF Association resources, SMSF Connect
 - Should form part of your assessment under 5961B(2)(e)(ii)

Investment Strategy

- 575.353 – 33% of members did not know that an SMSF must have an investment strategy.
- 575.357 Expect Advice providers to explain the concept of diversification
- 575.358 Diversification is not well understood by members.

Fines and Penalties

1. Consequences of breaching Trustee duties
2. ATO enforcement & compliance
3. Culpability – dominant trustee
4. Explain Fines & Penalties
5. 575.194 – believe you are legally responsible for their SMSF and would be held accountable.

Roles & Obligations

Declarations

- 575.273 – Expect that the AP will explain each duty & obligation that trustees must meet
- 575.275) Trustee liability to Manage the SMSF, including consequences
- Complete the ATO Trustee Declaration within 21 days


Admin

- 575.283 Critically probe why the client wants to set up an SMSF
- Control v outsourcing ?
- 575.285 client wish to outsource all aspects of SMSF
- Do they really want an SMSF?
- Consider ASIC red flag 4 & 6

Time


- Commitment to managing the fund
- Investment Trends, expectation is admin will take <2hrs per month, reality is 2hrs/week
- 575.186 – 38% Admin took more time than expected.
- 10,000 funds wind up each year, 32% due to either admin time or cost.

***** Disclosure of Risks & Costs**



Info 205	Costs	Contingency costs
<ol style="list-style-type: none"> 575.322 should have regard for the content of INFO 205 when discussing setting up an SMSF Familiar with the risks of SMSF structure as detailed in 205 <ul style="list-style-type: none"> Death or disablement Exit Strategy, 575.192, 30% had No Exit strategy 	<ol style="list-style-type: none"> 575.303 – 54% of files had not adequately disclosed the cost of winding up an SMSF Consider ASIC INFO 206 when discussing SMSF set up An SMSF is not for life! 	<ol style="list-style-type: none"> Contingency costs <ul style="list-style-type: none"> Early exit from Investments (property) Compliance costs, ie change to corporate structure


Disclosure of Risks & Costs*



Membership	AFCA/SCT	Government compensation
<ol style="list-style-type: none"> Explain the advantages/disadvantages of corporate & individual trustee structures Unusual membership structures, explain; <ul style="list-style-type: none"> Trustee obligations & duties Risks of the structure Well documented specific Investment strategy Quality documents that include dispute resolution clauses. 	<ol style="list-style-type: none"> SMSF do not have access to the SCT/AFCA to resolve complaints 575.328, 35% of files had inadequate disclosure re loss of access to complaints mechanisms Impact on Insurance <ul style="list-style-type: none"> You must consider and advise on insurance before recommending an SMSF 	<ol style="list-style-type: none"> 575.324, 38% did not warn their clients about the lack of Government compensation available to SMSF <ul style="list-style-type: none"> 575.192(c) – 29% thought they would be entitled to compensation in the event of theft/fraud in the SMSF

*575.319 despite our guidance in Info 205 ASIC found significant deficiencies in disclosure of Risks


Investment Strategy*



Choice	Property
<ol style="list-style-type: none"> Explain Sole Purpose Test Diversification (ATO mailout) SMSF Investment & use restrictions (S66) Strategy will change and need to review regularly 	<ol style="list-style-type: none"> Single Asset, SOA should adequately document why the investment is appropriate, compared to a diversified portfolio Real Property Investment, discuss (575.366) <ul style="list-style-type: none"> Impact & risk of leverage (LRBA) 575.365 borrowing is not risk free How long it will take to repay loan Repayment if unexpected event occurs, ie unemployment or no rental income Liquidity & disposal, consider contingency situation How the asset will fund retirement income stream, ie sell or rental income to meet payment standards Risk that the value may decrease

*ATO mailout – Is your SMSF investment strategy meeting diversification requirements

Strategies & Contingencies



When?

1. Contingency & succession plans

- Death or disablement
- Unemployment or illness

1. 575.321, 54% of files had not adequately disclosed the need to consider an Exit Strategy.

2. 575.192, 30% had No Exit strategy

Control

1. 575.314 Expectation the less active trustee will have considered what to do, if the controlling trustee becomes unable to manage the fund


2. 575.315, 33% of trustees had no existing arrangements in place

How?

1. An SMSF is not for life

- 575.315(10) explain to clients in Pension phase that there may be a point when the SMSF may cease to be cost effective because fixed costs will remain constant (or increase) while the fund balance will diminish.

Where to from here?




Review
Existing arrangements

Design new SMSF advice
process

Deployment of training to
address knowledge gaps
with team and referral
partners

Disclaimer



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