Tips for giving self-managed superannuation fund advice

Information Sheet 274 (INFO 274) is for Australian financial services (AFS) licensees and their representatives who provide personal advice to retail clients.

It provides tips to help advice providers comply with their legal obligations when giving advice about self-managed superannuation funds (SMSFs), including a range of factors to consider when advising a client to withdraw their superannuation from a fund regulated by the Australian Prudential Regulation Authority (APRA) to set up an SMSF.

The information sheet covers the following topics:

- understanding your obligations when giving SMSF advice
- using your professional judgement to assess whether an SMSF is suitable for your client
- considering the risks of an SMSF compared to an APRA-regulated superannuation fund (including that your client is responsible for their SMSF)
- providing appropriate advice to your client that considers the costs of an SMSF and how much they would need to set up an SMSF, and
- considering a suitable trustee structure, investment strategy, the need for ongoing financial advice, and an exit strategy for your client.

For more detailed guidance on these issues, see Where can I get more information?

Understanding your obligations when giving SMSF advice

As an advice provider giving SMSF advice, you must comply with:

- the conduct and disclosure obligations in Parts 7.7 and 7.7A of the *Corporations Act 2001* (Corporations Act)
- the Financial Planners and Advisers Code of Ethics (Code of Ethics), the *Superannuation Industry (Supervision) Act 1993* (SIS Act), and
- the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

ASIC has issued relevant guidance on what advice providers can do to meet these obligations in Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* (RG 175), Information Sheet 267 *Tips for giving limited advice* (INFO 267) and Information Sheet 182 *Super switching advice: Complying with your obligations* (INFO 182).

ASIC's role in regulating SMSFs

In regulating SMSFs, ASIC considers contraventions of the Corporations Act, the SIS Act and the ASIC Act, and is responsible for regulating the following harms:

- dishonest conduct and fraud (section 1041G of the Corporations Act)
- misleading and deceptive conduct (sections 769C, 1041E, 1041F and 1041H of the Corporations Act; sections 12DA–12DC, 12DF–12DG and 12BB of the ASIC Act)
- unlicensed advice (section 911A of the Corporations Act)
- contraventions of the relevant conduct and disclosure obligations, including the best interests duty and related obligations (sections 961B, 961G–961H and 961J of the Corporations Act)
- contraventions of the Code of Ethics (section 921E of the Corporations Act), and
- contraventions relating to SMSF auditors (sections 128D–128H and 130F of the SIS Act).

For more information about ASIC's role in financial advice, see How ASIC regulates financial advice.

For more information about ASIC's role in super, see ASIC's role in super.

AFS licensees

If you are an AFS licensee, you must consider how your compliance processes and systems are relevant to providing personal advice about SMSFs, including in complying with:

- your general obligations under section 912A of the Corporations Act, and
- other obligations under section 961K or 961L of the Corporations Act.

As an AFS licensee, you should also ensure your compliance processes and systems detect and address:

- potential dishonest conduct and fraud or misleading and deceptive conduct, and
- the risk of providing unlicensed advice, including whether your financial advisers act outside the scope of your AFS licence authorisations or conditions.

Financial advisers

The same rules apply to all personal advice. If you are a financial adviser, when giving personal advice (including SMSF advice), you must:

- act in the best interests of the client (section 961B of the Corporations Act)
- provide the client with appropriate advice (section 961G of the Corporations Act)
- warn the client if the advice is based on incomplete or inaccurate information (section 961H of the Corporations Act), and
- prioritise the interests of the client (section 961J of the Corporations Act).

We refer to these obligations collectively as ‘the best interests duty and related obligations’.

If your advice recommends replacing one product with another (switching advice) (section 947D of the Corporations Act), you must include additional information in a Statement of Advice (SOA).

Financial advisers must also comply with the Code of Ethics: section 921E of the Corporations Act. The Code of Ethics is a set of standards and core values designed to encourage higher standards of behaviour and professionalism for financial advisers. As a financial adviser, you must comply with the obligations set out in the Code of Ethics.

For more detailed guidance on the best interests duty and related obligations, see RG 175 at RG 175.229–RG 175.371.

Using your professional judgement to assess whether an SMSF is suitable for your client

You will need to use your professional judgement when recommending an SMSF to a client. This will include considering your client’s relevant circumstances and explaining the implications of your SMSF advice recommendations.

SMSFs are suitable for some, but not all, clients. Setting up an SMSF is a significant step and may have serious consequences for your client, their retirement savings and their insurance cover. Some factors that should be considered by you when giving SMSF advice are outlined below. This is not an exhaustive list.

For more information about assessing suitability for an SMSF, see Attachment to Information Sheet 274 *Example case studies: Advice on the suitability of a self-managed superannuation fund* (PDF 261 KB).

For more detailed guidance about using your professional judgement when providing advice, see RG 175 at RG 175.363.

What types of professional advice are appropriate?

Clients who are considering whether an SMSF is suitable for them may benefit from advice from various professionals.

A financial adviser can assist clients with making an informed decision on whether an SMSF is the right retirement savings vehicle for them. When providing SMSF advice, you must assess whether an SMSF is the right retirement savings vehicle for your client based on their circumstances before your client transfers their retirement savings from an APRA-regulated superannuation fund to an SMSF.

Providing personal advice to clients about SMSFs requires specialist knowledge, so before providing SMSF advice it’s important that you have and maintain SMSF knowledge and expertise.

Other professional advice (including from an SMSF auditor, accountant or legal professional) may also help clients meet their SMSF trustee responsibilities. However, these professionals may be limited in their ability to provide financial product advice to clients about SMSFs.

Is an SMSF suitable for your client?

Examples of factors to consider when determining the suitability of an SMSF for your client may include:

- whether your client understands and accepts that although they may outsource their SMSF responsibilities to professional advisers, your client (as the SMSF trustee) is responsible for ensuring compliance with superannuation, corporations and taxation laws
- whether your client has the time, skills, general interest, and experience to meet their trustee responsibilities
- any relevant vulnerabilities your client may be experiencing (e.g. cognitive impairment, accessibility constraints or coercion/elder abuse)
- the cost-effectiveness of an SMSF considering your client's existing arrangements and relevant circumstances (see How much will an SMSF cost your client?)
- whether your client has any future plans to move overseas as this decision may have an impact on the fund and its ability to meet the residency rules, and
- other arrangements that may still provide some of the benefits of an SMSF, such as 'a member directed investment facility' within an APRA-regulated superannuation fund.

For more information on setting up an SMSF, see Setting up on the Australian Taxation Office (ATO) website.

For more detailed guidance, see also RG 175 at RG 175.194 (on the basis for your advice), RG 175.363–RG 175.365 (on using your judgement when providing advice) and RG 175.314, RG 175.330, RG 175.340 and RG 175.413(c) (on providing complex advice and strategies).

Considering the risks of an SMSF compared to an APRA-regulated superannuation fund

You must consider whether your client understands and accepts the risks and differences of an SMSF compared to an APRA-regulated fund.

What happens in the event of theft or fraud?

You must ensure that your client understands and accepts that in the event of theft or fraud, access to statutory compensation will be different for an SMSF compared to an APRA-regulated fund. Clients should understand that:

- an SMSF does not have the same protections as an APRA-regulated fund and is not eligible for government compensation, and
- while they may have legal options in these circumstances, there is no certainty that compensation will be awarded.

In comparison, members of APRA-regulated funds are generally eligible for compensation in the event of theft or fraud.

For more detailed guidance, see RG 175 at RG 175.192–RG 175.194 (your advice and the basis for your advice) and RG 175.384–RG 175.388 (information when giving switching advice).

Who resolves trustee complaints?

You must ensure your client understands that the complaints process for SMSF trustees is different than being a member of an APRA-regulated superannuation fund and that SMSF trustees (and members) may be required to resolve their own complaints.

Clients should be aware of situations where disputes may arise, including:

- in the event of trustee relationship breakdown
- where member death benefits must be paid, or
- if trustees consider they have received unsuitable professional advice.

You must ensure that your client understands that access to the Australian Financial Complaints Authority (a no-cost external dispute resolution service) is only available to SMSF investors in certain circumstances – for example, if they received advice from a licensed financial adviser and their complaint relates to the financial advice about the suitability of an SMSF, the SMSF investments or insurance products.

What are your client's legal responsibilities as trustee?

You must consider whether your client understands and accepts that, as the trustee of their SMSF, they are personally responsible for running the fund according to its trust deed and ensuring compliance with superannuation, corporations and taxation laws.

These obligations apply even if they get help from a professional or another member of the SMSF. This includes the possible implications if things go wrong.

You must consider and ensure your client understands that:

- your client (as the SMSF trustee) is responsible for ensuring their SMSF complies with superannuation, corporations and taxation laws
- while trustees can use professionals or rely on other trustees to help run their SMSF, responsibility for SMSF compliance remains with the trustees
- all trustees share responsibility equally
- SMSFs are regulated by the ATO (see Self-managed super funds on the ATO's website)
- professionals who provide tax agent services must be on the Tax Practitioners Board register
- companies are regulated by ASIC
- SMSF auditors must be registered with ASIC as an 'approved SMSF auditor' on the SMSF auditor register before they can sign off on SMSF audit reports, and
- all financial advisers who provide personal advice on SMSFs must be licensed by an AFS licence and registered with ASIC (see the Financial advisers register on ASIC's Moneysmart website).

What are the penalties for trustees if things go wrong?

You must also explain to your clients the potential implications and consequences of non-compliance with superannuation, corporations and taxation laws, including:

- administration penalties
- enforceable undertakings
- disqualification
- civil and criminal penalties, and
- tax consequences.

For more information, see How we deal with non-compliance on the ATO's website.

Providing appropriate advice to your client that considers the costs of an SMSF and how much they would need to set up an SMSF

How much will an SMSF cost your client?

You must ensure your client understands the costs of an SMSF throughout its lifecycle. The costs of an SMSF for your client will vary based on your client's relevant circumstances. Examples of factors to consider are set out in Table 1.

Table 1: Overview of costs for an SMSF

Stage	Unavoidable costs	Optional costs
Setting up an SMSF	Legal costs for setting up a trust deed	Professional fees (including advice), establishing a corporate trustee

Stage	Unavoidable costs	Optional costs
Managing an SMSF (responsibilities as an SMSF trustee)	You should consider and discuss with your client the time involved in managing an SMSF, which is an 'opportunity cost' for the trustee. This cost will depend on your client's relevant circumstances. However, the time–cost associated with an SMSF structure will be different to how they engage with an APRA-regulated fund.	Professional fees (including advice)
Administering and reporting	Annual ATO SMSF supervisory levy, annual independent audit fee, costs to produce the fund's annual financial statements and tax return, and (when required) the fee for annual actuarial certification	Costs for amending the trust deed of the SMSF, professional fees (including advice), insurance costs, and investment management fees
Winding up an SMSF	Costs to sell investments and pay member benefits, and produce the fund's final financial accounts and tax return	Professional fees (including advice)

You may also consider and inform clients about SMSF costs using statistical information on SMSFs. The ATO website provides statistical information on SMSFs including data on expenses on its Super Statistics page.

Note: The ATO has used a methodology to calculate SMSF investment performance in line with recommendations made from independent research conducted by the International Centre for Financial Services (University of Adelaide). Return on assets (ROA) is an indicator of performance across the entire SMSF sector and is not a direct comparison to APRA fund investment performance as the data inputs and methodology used are different.

How much money does your client need to set up an SMSF?

The starting balance of an SMSF is one of a range of factors you should consider when recommending an SMSF for your client as this is relevant to the cost-effectiveness of an SMSF.

Statistical data on the ATO's Super Statistics page shows that fund expenses are proportionally higher, and net returns lower, for lower balance funds. However, there may be circumstances when an SMSF with a lower starting balance is consistent with your client's best interests.

Examples include if:

- the trustee is willing and able to undertake much of the administration and management of investments to make it more cost-effective, or
- a large contribution will be made into the SMSF within a short timeframe (such as within a few months) after the fund is set up.

There may be circumstances when an SMSF with a higher starting balance is not in your client's best interests because it does not meet your client's objectives, financial situation or needs.

For more information about assessing suitability for an SMSF, see Attachment to Information Sheet 274 *Example case studies: Advice on the suitability of a self-managed superannuation fund* (PDF 261 KB).

For information about when it is reasonable to recommend a financial product, see RG 175 at RG 175.334–RG 175.339 and RG 175.340–RG 175.341 about conducting a reasonable investigation.

What information must be included in an SOA about SMSFs and insurance (if applicable)?

You must set out additional information in an SOA when your advice recommends replacement of one product with another. Your SOA must explain the potential benefits that may be lost and any other significant consequences to your client.

For more information and compliance tips about 'switching advice', see INFO 182 and RG 175 at RG 175.186–RG 175.187, RG 175.349–RG 175.353 and RG 175.384–RG 175.388.

Considering a suitable trustee structure, investment strategy, the need for ongoing financial advice and an exit strategy for your client

After determining your client's suitability for an SMSF and explaining your advice so your client can make an informed decision on costs, risks and trustee responsibilities, there are additional factors you should consider and discuss with them. For more information about good quality advice and informed decisions, see RG 175 at RG 175.1.

What trustee structure is suitable for your client?

You should advise your client about whether a corporate or individual trustee structure is suitable for their circumstances, including providing your client with a comparison of the risks and benefits of each structure.

Examples of factors to consider for your client may include:

- cost, including the potential cost of changing the trustee structure later on
- compliance with the SMSF trust deed, superannuation, corporations and taxation laws, the company's constitution and the Corporations Act
- administration and reporting requirements
- trustee succession planning for your client (i.e. ensuring arrangements are in place for trustees and directors who are unable to fulfil these roles in the event of illness or death), and
- SMSF asset ownership considerations.

This is not an exhaustive list when considering suitable trustee structures. Trustee succession planning should be considered alongside your client's exit strategy (see Does your client have an exit strategy?).

For more information on trustee structures for SMSFs, see Setting up on the ATO's website.

Does your client understand their investment strategy?

You must advise your client about the requirement and purpose of the SMSF's investment strategy. Your client should understand their SMSF investment strategy provides the basis for the SMSF's investment decisions and how members intend to increase their retirement benefits.

In relation to their SMSF investment strategy, you should also ensure your client understands:

- before they start making investments, they must have an investment strategy
- the investment strategy must be reviewed regularly
- they should consider whether to hold insurance cover (see What about your client's insurance arrangements?), and
- the investment strategy should be in writing and any changes should be documented.

You can assist your client to develop their investment objectives and an investment strategy for the SMSF. However, you must ensure that your client understands that they are responsible for managing the investments in the best financial interests of its members and in accordance with the law.

When documenting the investment strategy, you should consider and discuss with your client:

- the fund's investment objectives and types of investments the fund can make
- diversification (different assets and asset classes)
- the risk and likely return from investments
- liquidity of fund assets and ability to meet fund expenses as they arise (including retirement benefits)
- whether their investment strategy is consistent with the trust deed, and
- members' tolerance for risk (capital loss, longevity risk, market risk and inflation risk).

When considering the investment strategy, it is also an opportunity to ensure your client has a valid death benefit nomination in place, that their death benefit nomination is reviewed regularly, and that they understand the implications of not having a valid death benefit nomination in place.

For more information about an SMSF investment strategy, see Investing on the ATO's website.

How will your client's investment strategy and recommendations be implemented?

Unlike other professional advisers your client may seek advice from, financial advisers are licensed to provide personal advice to your clients about SMSFs and implement their SMSF investment strategy.

You should ensure your clients understand that the fund's investment strategy should be reviewed regularly to ensure it remains current. It is important that you adequately consider and inform your clients about:

- the benefits associated with diversification (different assets and asset classes)
- the restrictions that apply to SMSF investments
- whether to hold insurance cover (see What about your client's insurance arrangements?), and
- the transactions that are prohibited, such as lending the fund's money, or providing financial assistance, to a member of the fund or their relatives.

You should ensure your clients understand the costs associated with implementing your SMSF advice recommendations (including ongoing fees).

When you recommend a limited recourse borrowing arrangement, your client should understand the associated risks and why this arrangement is appropriate for their relevant circumstances and SMSF.

For more information about providing advice on investments: see RG 175 at RG 175.319 and RG 175.334–RG 175.362.

What about your client's insurance arrangements?

An SMSF trustee will need to consider whether to obtain and hold insurance cover for members and assets. The lack of insurance cover may have significant consequences for a client depending on their relevant circumstances.

You must consider your client's need for suitable and affordable insurance. In relation to their SMSF, you should consider and discuss with your clients:

- their need for life, total and permanent disability (TPD) and disability income insurance, and
- assets in the SMSF that may need insurance if applicable.

If your clients have existing insurance cover in their APRA-regulated fund, you must consider and inform your client of the costs and benefits of their insurance options, including:

- maintaining insurance cover through their existing APRA-regulated superannuation fund (this will require keeping a sufficient balance to ensure that future insurance premiums are funded and the cost of retaining two superannuation arrangements)
- deciding not to hold any insurance, or
- replacing existing insurance with a new insurance policy taken out by the SMSF.

We expect that any factors involved for the client in replacing existing insurance with a new insurance policy will be considered, including any adverse consequences of a new insurance policy, such as exclusions and insurance premium loadings.

See INFO 267 for more information about addressing out-of-scope advice needs or other advice needs in relation to other SMSF assets that may need insurance.

Does your client have an exit strategy?

Trustees may want or need to wind up their SMSF for several reasons. These circumstances may not be relevant at the time of setting up the SMSF but may be relevant to the client in the future.

It is important that you assist your client with having an exit strategy from the outset to reduce the impact of 'unexpected' events. You should also consider your client's trustee structure when developing their exit strategy.

It is helpful for clients to understand possible reasons why they may need to wind up their SMSF. These may include:

- the expected superannuation contribution does not occur (i.e. the client may need to wind up their SMSF because it is not cost-effective)

- the trustee responsibilities become too onerous or costly
- a trustee dies or becomes incapacitated
- trustee disputes arise, including relationship breakdowns or different opinions on investments or running the fund, and
- the fund no longer meets the residency rules because a trustee has moved overseas.

It is important that your client has a valid death benefit nomination in place in the event that a trustee dies. It is also important that your client's death benefit nomination is reviewed regularly and that your client understands the implications of not having a valid death benefit nomination in place.

Winding up an SMSF requires a number of steps that you must ensure your client understands. It is important that you advise your clients about an exit strategy for their SMSF to make any exit as straightforward as possible.

For more information about winding up an SMSF, see Winding up on the ATO's website.

Where can I get more information?

For more information, see:

- Attachment to Information Sheet 274 *Example case studies: Advice on the suitability of a self-managed superannuation fund* (PDF 261 KB)
- RG 175 *Licensing: Financial product advisers—Conduct and disclosure*
- RG 244 *Giving information, general advice and scaled advice*
- INFO 182 *Super switching advice: Complying with your obligations*
- INFO 267 *Tips for giving limited advice*
- Visit the Self-managed super funds page on the ATO's website.
- Download the ATO's publication, *Starting a self-managed super fund* (PDF 1.6 MB)
- Download the ATO's publication, *Winding up a self-managed super fund* (PDF 860 KB)

You can also ask us a question online.

Important notice

Please note that this information sheet is a summary giving you basic information about a particular topic. It does not cover the whole of the relevant law regarding that topic, and it is not a substitute for professional advice. Omission of any matter on this information sheet will not relieve a company or its officers from any penalty incurred by failing to comply with the statutory obligations of the Corporations Act.

You should also note that because this information sheet avoids legal language wherever possible, it might include some generalisations about the application of the law. Some provisions of the law referred to have exceptions or important qualifications. In most cases, your particular circumstances must be taken into account when determining how the law applies to you.

This is **Information Sheet 274 (INFO 274)**, issued in December 2022. This information sheet replaces Information Sheet 205 *Advice on self-managed superannuation funds: Disclosure of risks* (INFO 205) and Information Sheet 206 *Advice on self-managed superannuation funds: Disclosure of costs* (INFO 206), which have been withdrawn.

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