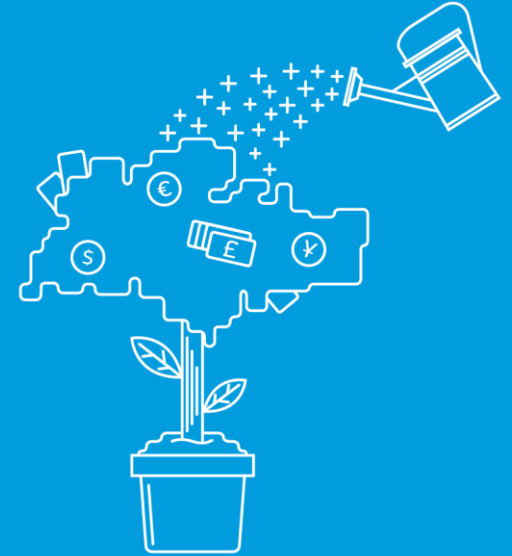


THE POWER OF BEING UNDERSTOOD

AUDIT | TAX | CONSULTING

THINKING OF
STARTING
YOUR OWN
SMSF?



AUSTRALIAN SUPERANNUATION & SMSF

Gary Marsh, Senior Adviser, RSM Financial Services Australia

General Advice Warning

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Where a particular financial product is discussed, you should obtain and read the Product Disclosure Statement (PDS) and consider speaking to a financial adviser before making a decision in relation to that product.

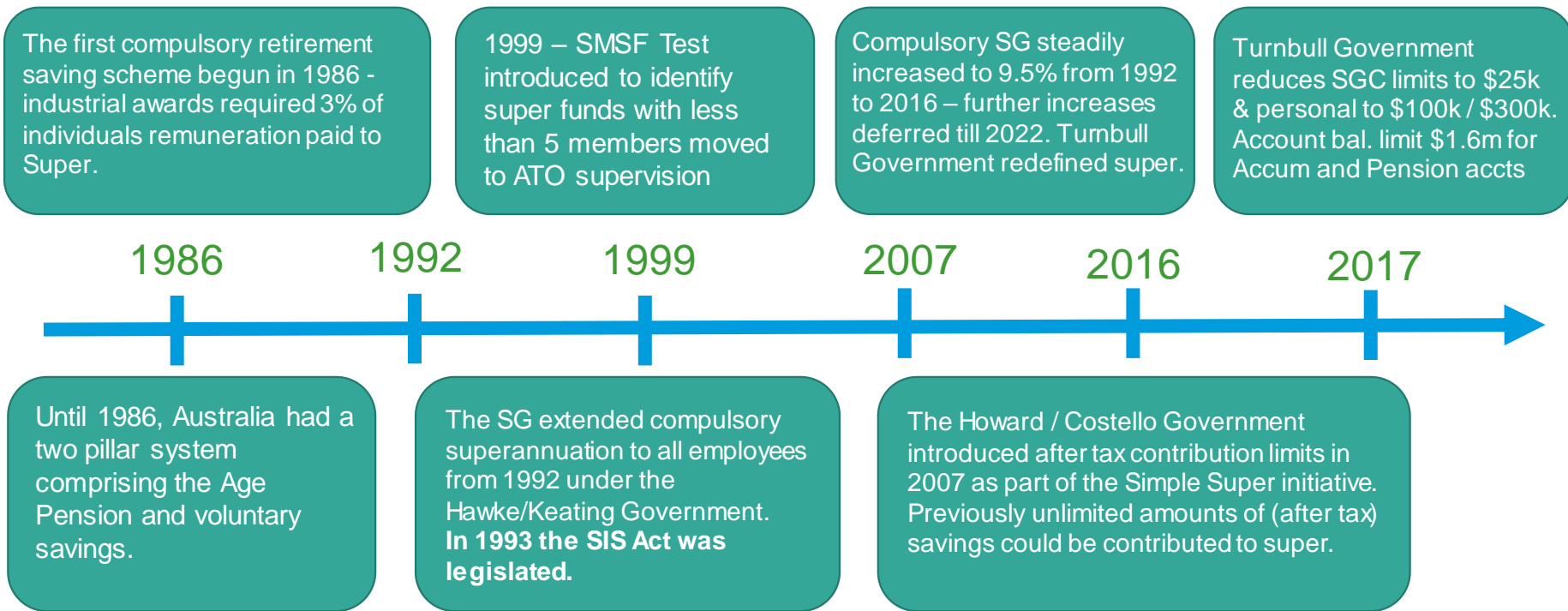
RSM Financial Services is registered with the Tax Practitioners Board as a Tax Financial Adviser. Taxation outcomes outlined in the presentation are to assist you in understanding the implications of financial strategies, detailed personal tax advice should be sought from a Registered Tax Agent.

The information contained in this presentation is current as at 15th of March 2021.



SUPERANNUATION IN AUSTRALIA

Overview of Superannuation



SIS Act 1993 – Superannuation Industry (Supervision) Act

Govt's Intention for Superannuation

1. Reduce reliance on the Government Age Pension
2. Provide comfortable retirement without Govt Age Pension
3. Provide early retirement – if required
4. Provide post-retirement flexibility i.e. income stream or lump sum

Stated **core purpose**
of super:

*“To provide income in retirement to
substitute or supplement the Age Pension”.*

Federal Treasurer – Honourable Mr Scott
Morrison MP

Overview of Super today

SG will increase
from 9.5% to 10%
in 2022 -

Super today
attracts an
SGC of 9.5%

Majority of
Australians
have super

This means the majority of
individuals have an indirect
exposure to stock & bond
markets

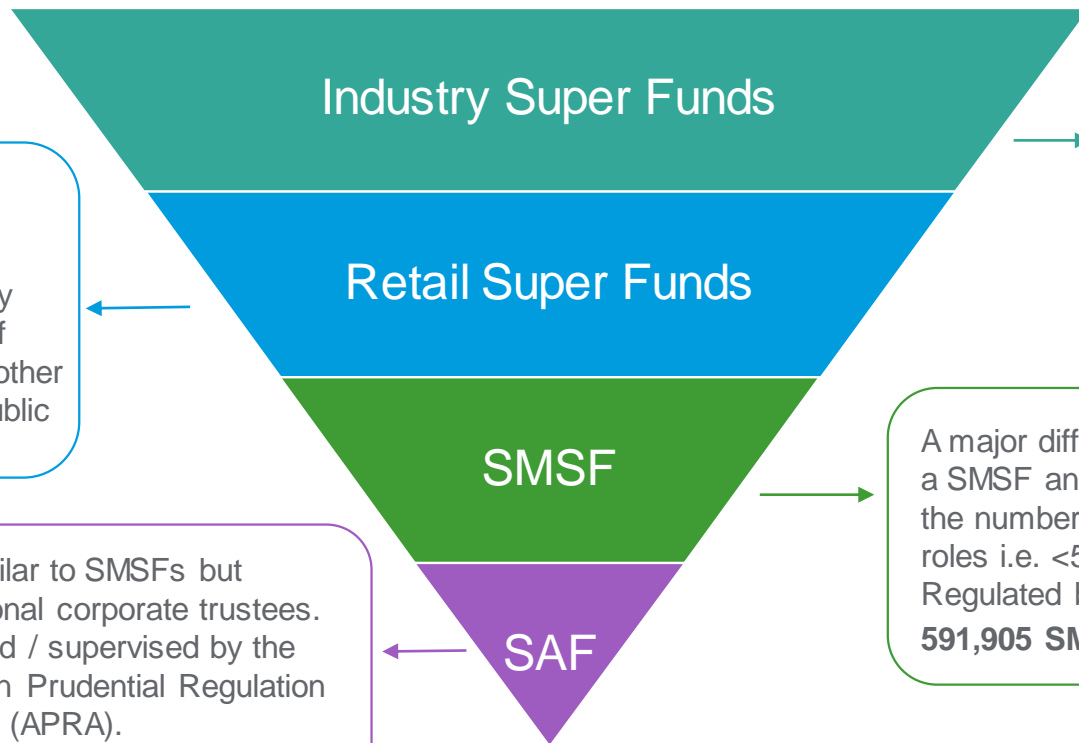
Approx. 25% (\$733b) of these
assets are in the SMSF sector
which is regulated by ATO

Super assets
in Australia
are approx.
\$2.9 trillion

Super is the
second largest
asset held by
Australian
households

Source: Quarterly Superannuation Performance Sept
2020, Australia Prudential Regulation Authority (APRA)

Breaking down Super Fund types



Retail super funds are generally provided by financial institutions – regulated by APRA. They can offer a wide range of investment options and other services to clients i.e. public in general.

Industry super funds refer to a group or category of funds originally established to cater for workers within a specific industry sector. Regulated by APRA.

A major difference between a SMSF and other super funds are the number of members and their roles i.e. <5 trustees/directors. Regulated by ATO.

591,905 SMSF Sept 2020.

Very similar to SMSFs but professional corporate trustees. Regulated / supervised by the Australian Prudential Regulation Authority (APRA).

1,593 SAF Sept 2020

Who regulates Super Funds – APRA & ATO

- Australian Prudential Regulatory Authority (APRA)
- Supervises and regulates:
 - ADI's – Authorized deposit-taking Institutions i.e. banks
 - Superannuation Funds – **(excludes SMSF's & Public Sector)**
 - Life Insurance & Friendly Societies
 - General Insurance providers
 - Private Health Insurance providers
- Supervises 1,798 super funds \$1.921T in assets*
- ATO regulates SMSF - 591,905 funds \$733B in assets*

Poll 1

- A. I have a SMSF.
- B. I am thinking of establishing a SMSF.
- C. I want to close a SMSF.
- D. I don't have a SMSF.



Why have a SMSF?



- Take greater direct control of investments
- Reduce cost – investment / administrative
- Invest in non-mainstream investments e.g. real assets etc.
- Introduce structured leverage positions via LRBA
- Manage family wealth more efficiently
- Protect assets from legal claims

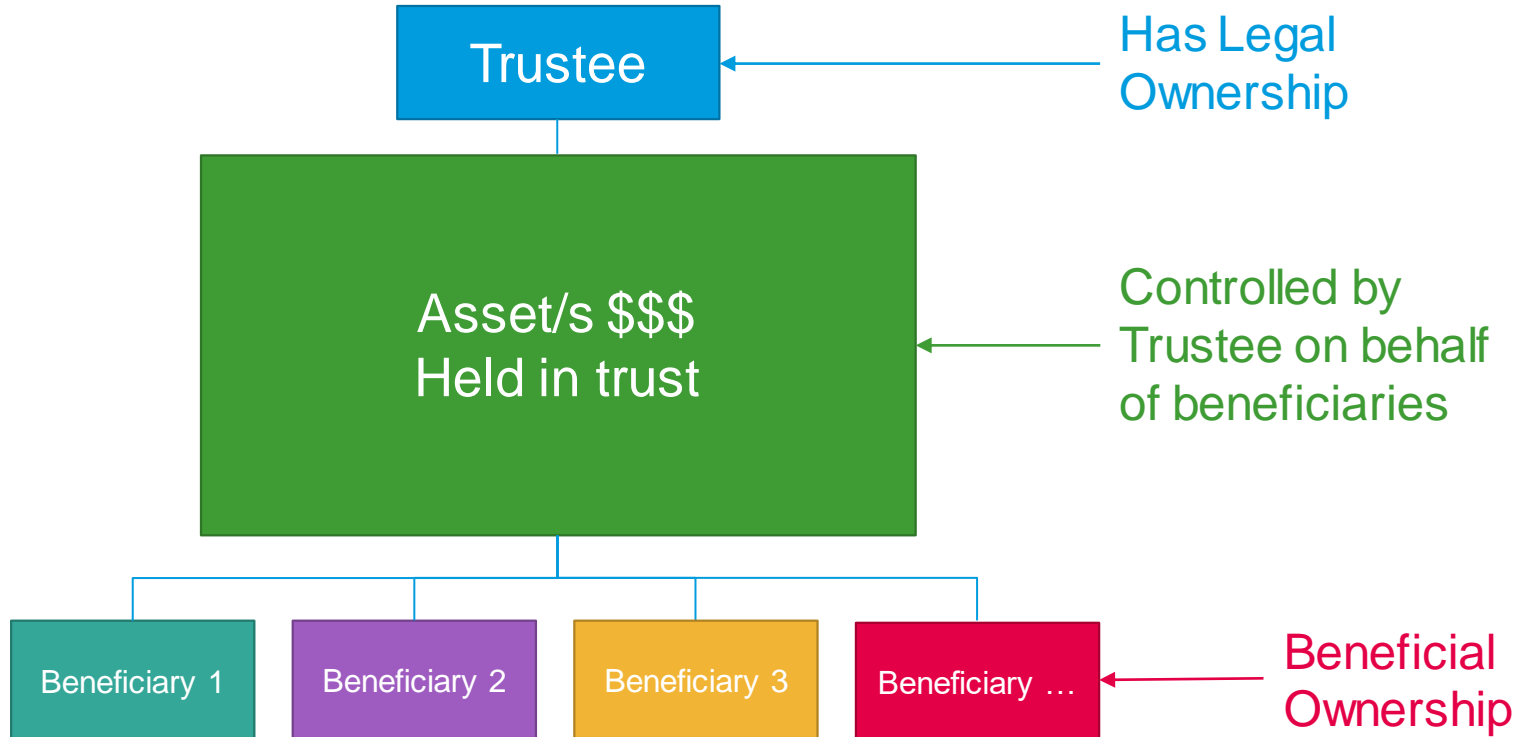
Is an SMSF suitable for everyone?

- Simple answer is “no”.
- SMSF are complex structures with many obligations and rules which may fall outside the average person’s abilities or interests
- ASIC have found that SMSF’s with acct bal. <\$500k have lower returns than APRA funds.
- SMSF members do not have the same consumer or recourse protection as APRA funds
- Trustees can be personally liable for errors or omissions i.e. joint liability for all personal trustees

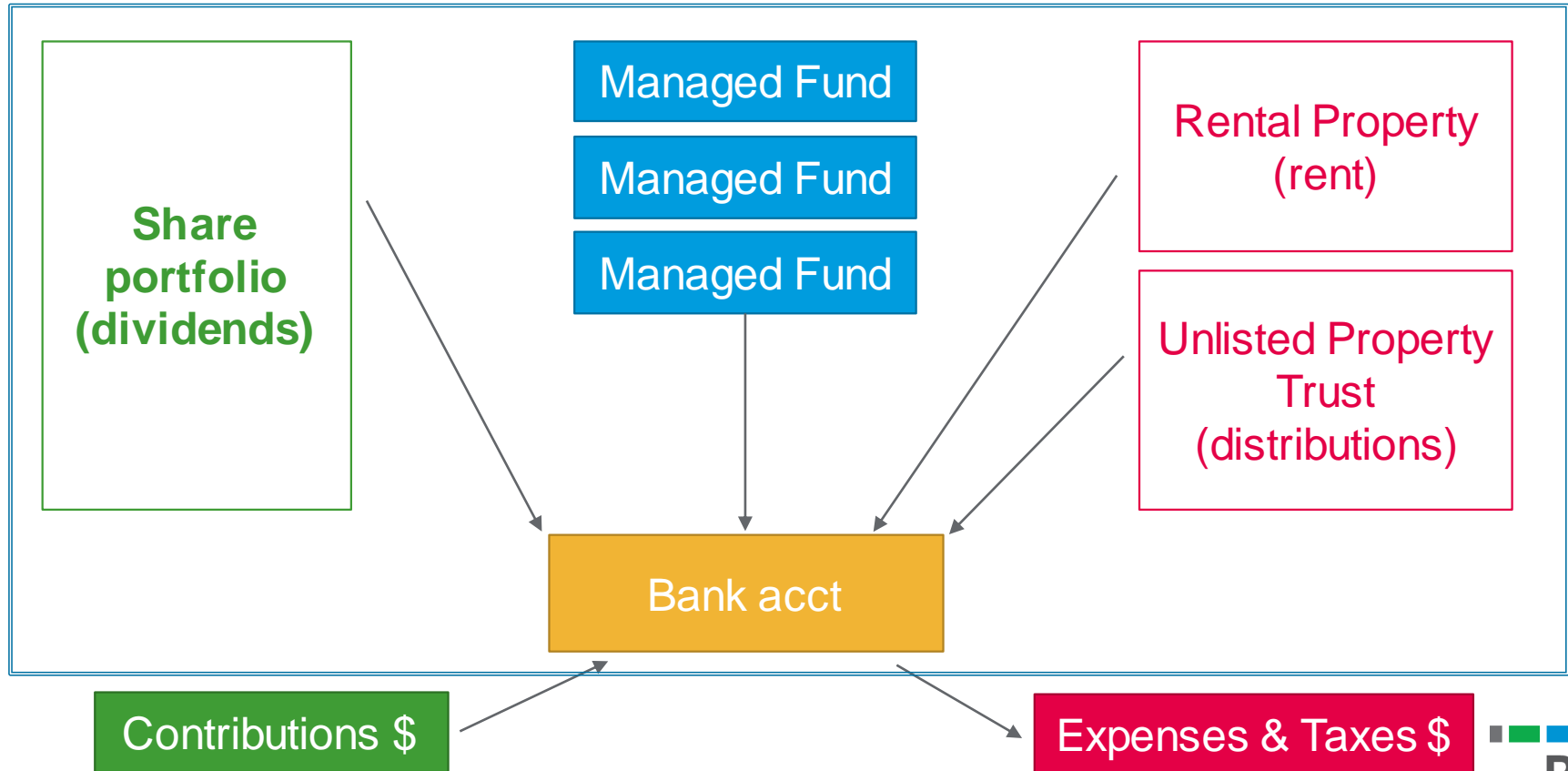


SMSF FUNDAMENTALS

Basic Structure of Superannuation



Investment Structure of SMSF



Key Differences – SMSF vs Retail

SMSF

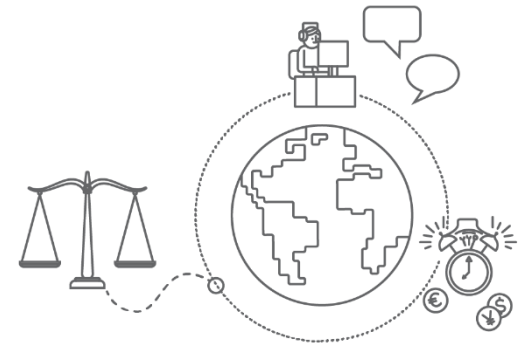
- Corporate or Individual Regulated by ATO
- <5 members (6 members proposed)
- All trustees must be beneficiaries
- Set of accts + audit + Tax return
- Trustee ultimate responsibility for tax & super law compliance
- Member complaint / dispute resolution via courts – no govt support
- Must have a formal investment strategy – reviewed each year by trustee and auditor
- Investments can include real property e.g. houses, bullion, stamps, art.
- Direct borrowing via LRBA structure allowed

Retail Super

- Corporate Trustee regulated by APRA
- Unlimited members (single trustee)
- Trustees separate from members
- Fin accts, tax rtns and audits provided / managed by corporate trustee
- Trustee responsible for super fund admin / compliance
- Members have access to AFSC – potential compensation
- Have a defined / limited list of investments i.e. generally listed or unlisted managed assets.
- Direct borrowings prohibited – but may via indirect gearing

SMSF Trust Deed

- Is the primary legal document of a super fund
- Will identify the trustee – individuals / corporate
- Specifies rules and obligations of the fund, its trustees and beneficiaries (members)
- Generally prepared by a legal professional based on relevant legislation
- Some deeds may include a clause stating where the deed is inconsistent or silent then the relevant section of the *SIS Act 1993* will apply



Trustee Type – Individual vs Corporate

Individual Trustees

- Each trustee must be a member and visa versa
- Not required to register with ASIC
- All have equal say in operation of fund
- Members may have a zero balance
- Legal ownership of assets held in name of each trustee
- All are equally responsible / liable for operation of the SMSF

Corporate Trustee – Pty Limited

- Must register company with ASIC and list directors (all members)
- Assets recorded in the name of Corporate trustee
- Australian Business Number and Tax File Number
- Not all director / members must be shareholders

Some Regulations for SMSF

- SMSF must be a “regulated” fund – eligible tax concessions.
- Sole Purpose Test – fund assets must be held for benefit of members in retirement / disability or their dependents on death
- Related Party transactions - members, employer sponsors and Part 8 Associates
- Inhouse Assets – limited to 5%
- Arm’s length transactions – unrelated parties or penalty
- Exemptions: listed securities and business real property

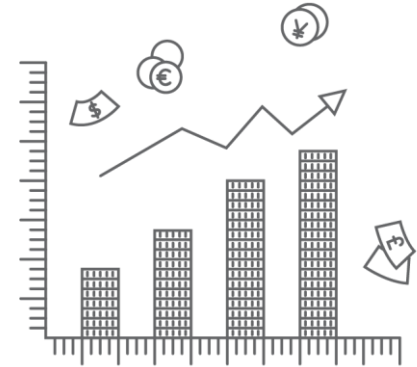
Related Party Transactions



Source: <https://www.ato.gov.au/super/self-managed-super-funds/investing/restrictions-on-investments/>

SMSF Investment Strategy Mandatory

- Fund investment objective/s
- Liquidity requirements of the fund
- Fund member classes
- Level of acceptable risk for fund / classes
- Investment horizon for fund assets
- Investment sector allocations specified
- Consideration for member death or disability insurance
- Reviewed annually and decisions documented



Sole Purpose Test

- Sole Purpose Test – a key tenant of SMSF operation
- Core purposes: to provide benefits to members in retirement or their dependents in the event of death
- Ancillary purposes: temporary disability or unemployment due to physical or mental illness
- The SMSF must satisfy at least one core purpose for each member of the fund
- The Sole Purpose Test requires “exclusivity of purpose” for fund assets

SMSF – Sole Purpose Test Fail

- Jack & Jenny are married with two young children. Jack works as a business manager, Jenny runs a small online business from home while looking after their children. They have heard from friends that they could use their super money to buy a beach house.
- Keen to put their super to work they establish a SMSF, rollover their super money and buy a beach house. The property is rented out during the year on and off. During the recent holidays Jack and Jenny use the beach house as there are no bookings and pay the going rental rate.
- When the accounts are prepared Jack and Jenny are advised by their accountant that they have a compliance breach – under the Sole Purpose Test. The Sole Purpose Test states that a member of a fund may not derive a benefit from fund assets until meeting a condition of release i.e. retirement, disability or death.
- Jack and Jenny argue that they paid market rent and there were no bookings. Their accountant advises them that they are ineligible to use the property for personal use irrespective of paying rent or no bookings and may now incur a financial penalty for the breach.
- This restriction on use extends to their immediate family members and any business associates – as per Part 8 Associates of the SIS Act.
- They now have all their super money invested in a single asset, having paid establishment costs and will pay annual ongoing administration costs of the SMSF, while being unable to use the property.

Is Superannuation part of my estate?

- Superannuation trustee owns the assets of the SF
- When a member dies the SF trustee must follow specific rules as per deed
- A member / beneficiary has an entitlement to their account balance but are not the legal owner of assets and therefore do not form part of their estate.
- A member can direct their death benefits be paid to an eligible recipient or their estate via a Death Benefit Nomination.
- Any Life insurance held within superannuation is “owned” by the super fund trustee on the life of the member (not owned by the member).
- Life and Disability insurance held within a superannuation environment has different tax treatment to non-super policies.

Death Benefit Nomination – DBN or BDBN

Types of nominations available:

- Non-binding – on trustee
- Non-lapsing – continues after 3 years
- Binding – on the trustee

Who is a valid beneficiary for a binding nomination:

- Spouse
- Child (any age)
- Interdependent relation
- Estate (LPR)

What makes a nomination valid:

- Must be in writing
- Signed by two independent witnesses – not named in nomination
- Signed and dated all on the same date



Poll 2

- A. I have a superannuation death benefit nomination.
- B. I don't have a superannuation death benefit nomination.
- C. I'm not sure if I have a valid death benefit nomination.



SMSF – No Insurance Trap

- Bill and John run a small renovation business and plan to purchase a workshop with their super monies.
- They each establish a SMSF and rollover all of their existing super money to new SMSF's – for a combined total of \$500,000 and buy a property 50/50 between the two SF's.
- They pay rent to their respective super funds and hope to gain from long term property appreciation.
- Unfortunately, John dies unexpectedly in a car accident 5 months after buying the property.
- Neither Bill or John had taken time to review their personal insurances – which had lapsed when they rolled over their existing super balances into their new SMSF's.
- Bill now faces a dilemma - how to keep the workshop by buying John SMSF's share – with the property also increasing in value by 20% (John's SMSF share now \$300k).
- Unable to raise debt against the property Bill sells the property – incurring transaction costs and capital gains tax – and seeks new rental arrangements for the business.
- Had Bill and John established suitable insurances this might have allowed Bill to receive a cash benefit on John's death (or visa versa) and use the proceeds to purchase John's share of the property.
- John's SMSF must now payout his account balance as soon as practicable to the nominated beneficiary or Estate and close the SMSF.

Cost of Starting an SMSF

- Establishment Costs
 - SF Deed preparation - \$500 - \$800
 - ASIC registration for corporate trustee - \$500
 - ATO registration if undertaken by SMSF Accountant - \$700 - \$1,000
 - Investment strategy – if prepared by licensed / registered Financial Adviser - \$600 - \$1,000
 - Transferring other super benefits to the new SF – fees or taxes – will depend on \$ transfer balance

Cost of Running an SMSF

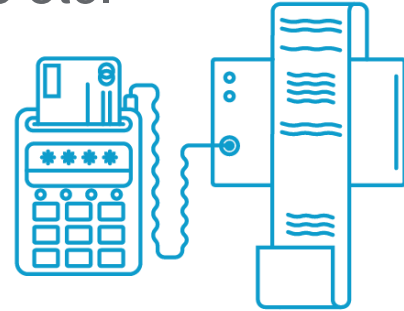
Ongoing Operational Activities

- Annual financial accounts – including asset valuation
- Tax return prepared by SMSF accountant
- Audit completed by registered SMSF Auditor
- Investment Adviser fees – investment strategy
- Direct asset management fees for unlisted investments
- General insurance and related direct property costs

Considerations When Closing SMSF

Wind up costs

- ASIC deregistration for corporate trustee
- ATO deregistration if undertaken by SMSF Accountant
- Final financial accounts and audit
- Investment liquidation costs – brokerage etc.
- ATO tax remittance – final
- Asset transfer costs – in specie
- Capital Gains Tax



Penalties for Non-Compliance

- Intentional, accidental or negligent breaches
- May lead to personal penalties for each trustee
- ATO may request an enforceable undertaking by Trustee to fix the issue / problem
- Trustee may be disqualified – new trustee found or SMSF closed
- Compliance status removed – leading to tax on all fund assets at 47%
- Failure to provide annual accounts, tax returns, related party loans, sole purposes test etc. – may lead to financial penalties for the SF and or Trustees or loss of tax status





ACCESSING SUPERANNUATION

Conditions of Release (COR)

SIS Act definition of retirement

“...the retirement of a person is taken to occur:

- (a) in the case of a person who has reached a preservation age that is less than 60 – if:
 - (i) an arrangement under which the member was gainfully employed has come to an end; and
 - (ii) the trustee is reasonably satisfied that the person intends never to again become gainfully employed, either on a full-time or a part-time basis; or
- (b) in the case of a person who has attained the age of 60 – an arrangement under which the member was gainfully employed has come to an end, and either of the following circumstances apply:
 - (i) the person attained that age on or before the ending of the employment; or
 - (ii) the trustee is reasonably satisfied that the person intends never to again become gainfully employed, either on a full-time or a part-time basis.”

Conditions of Release

< Age 58	Age 57 - 59	Age 60 - 64	+ Age 65
Cannot access super (exceptions below)	Permanent retirement from the workforce (declaration)	Ceased employment (no intention to stop work)	Full access

- Death (benefits are paid to your dependents or personal legal representative)
- Permanent incapacity
- Diagnosis of a terminal medical condition
- Severe financial hardship
- Eligibility for approval on compassionate grounds
- Non-residents leaving Australia (DASP)

Pension Drawdown Options

Age 58-64	Income Stream		Lump Sum
	Min	Max	
Non-commutable Pension (TTR)	2% - 4%	10%	N/A
Account Based Pension (ABP)	2% - 4%	100%	Up to 100%

Age	58 - 64	65 - 74	75 - 79	80 - 84	85 - 89	90 - 94	> 95
Min. Draw Rates	4.00%	5.00%	6.00%	7.00%	9.00%	11.00%	14.00%
Max. Draw Rates	100%	100%	100%	100%	100%	100%	100%

Creating a Self-Managed Superannuation Fund

- Determine trustee type – corporate vs individual
- If individual trustee then each members TFN
- Prepare SMSF Deed and associated invest strategy
- Nominate a SMSF Accountant and Auditor
- Register SMSF with ATO for regulated status
- Complete death benefit nominations for each member
- Establish a fund bank account and make initial contribution
- Fund SMSF with existing super cash or assets (rollover)
- Undertake review of insurance needs of members and document

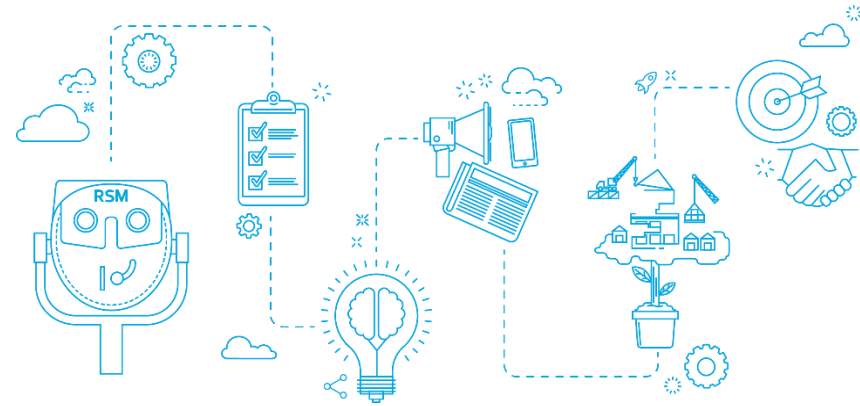
SUMMARY

- ✓ Super is a tax effective savings scheme to support Australians in retirement, disability or death
- ✓ SMSF are a highly personalised version of superannuation allowing greater control with commensurate responsibility and obligation
- ✓ Members should determine if they have sufficient funds, time and skills to establish and manage a SMSF over the longer term
- ✓ SMSFs do not offer the same level of government protection or recourse as APRA regulated funds
- ✓ When mistakes are made SMSF can become a very expensive exercise in terms of time, money and relationships



RSM Financial Services Australia

- Offices located around Australia
- Personal advice provided on:
 - Superannuation – including SMSF's
 - Non-super Investment strategies
 - Life and disability insurance
 - Centrelink and Aged Care
 - Estate planning
- Retirement preparation review – health check



Helpful Websites & Links

RSM Financial Services Australia

<https://www.rsm.global/australia/service/wealth-management-services>

<https://www.rsm.global/australia/people/gary-marsh>

LinkedIn

<https://www.linkedin.com/in/gary-marshnsw/>

ASIC – Money Smart Superannuation

<https://www.moneysmart.gov.au/superannuation-and-retirement>

Australian Tax Office - Superannuation

<https://www.ato.gov.au/Super/>

SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993

http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/sia1993473/

Advice on self-managed superannuation funds: Disclosure of costs

<https://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-costs/>

Questions
and answers?

Thank you
for your time
and attention