[*http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/*](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/)

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# Advice on self-managed superannuation funds: Disclosure of risks

This information sheet (INFO 205) provides guidance for Australian financial services (AFS) licensees (including limited AFS licensees) and their representatives who provide personal advice to retail clients about self-managed superannuation funds (SMSFs).

It explains:

* [the relevant conduct and disclosure obligations](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/#relevant-conduct-and-disclosure-obligations)
* the risks that should be considered by the adviser and disclosed to the client when providing personal advice about SMSFs, including:
* [the lack of statutory compensation](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/#lack-of-statutory-compensation)
* [the impact on insurance](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/#impact-on-insurance)
* [access to complaints mechanisms](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/#access-to-complaints-mechanisms)
* [the appropriateness of different SMSF structures](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/#different-smsf-structures)
* [trustee obligations and the time and skills necessary to operate an SMSF](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/#trustee-obligations-time-and-skills)
* [trustee obligations to develop an investment strategy](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/#trustee-obligations-investment-strategy)
* [the need to consider an exit strategy](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/#exit-strategy)
* [the additional information that must be included in a Statement of Advice](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/#additional-information)(SOA).

It provides ‘compliance tips’, which indicate the factors that ASIC is likely to look more closely at as part of our surveillance activities.

It should also help AFS licensees and their representatives comply with the conduct and disclosure obligations in Parts 7.7 and 7.7A of the Corporations Act 2001 (Corporations Act).

It focuses on the risks associated with setting up and switching to an SMSF, and should be read with Information Sheet 182 Super switching advice: Complying with your obligations ([INFO 182](http://asic.gov.au/regulatory-resources/superannuation-funds/superannuation-advice/super-switching-advice-complying-with-your-obligations-info-182/)) and Information Sheet 206 Advice on self-managed superannuation funds: Disclosure of costs ([INFO 206](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-costs/)).

## **INFO 205**

## **Lack of statutory compensation**

When advising a retail client to transfer (the whole or part of) an existing superannuation account balance from a superannuation fund regulated by the Australian Prudential Regulation Authority (APRA) to an SMSF, the client should be made aware that SMSFs are not subject to the same government protections that are available in APRA-regulated superannuation funds, such as statutory compensation in the event of theft or fraud.

Examples of appropriate disclosure when advising a retail client to set up an SMSF are:

* the client is taking themselves outside the compensation framework available to investors in an APRA-regulated superannuation fund in the event of theft or fraud on the fund
* the client will not be eligible for compensation under superannuation laws if the SMSF suffers loss as a result of theft or fraud in the underlying investment asset.

Even if no transfer is involved, when advising a retail client to set up an SMSF, advisers should make it clear that these government protections are not available to SMSFs.

**Compliance tip:** We are likely to look at whether the client received advice on the lack of statutory compensation when they received a recommendation to switch their superannuation from an APRA-regulated superannuation fund to an SMSF.

## 

## **Impact on insurance**

Advisers should consider a retail client’s need for appropriate and affordable life and total and permanent disability (TPD) insurance cover, and also include this information in the SOA.

Unless the SMSF trustee specifically takes out insurance for fund members, there may be no cover. Our experience is that life and TPD insurance is generally more expensive and harder to obtain for SMSFs than for larger APRA-regulated superannuation funds, which can often also offer default levels of cover without a medical assessment.

The lack of insurance cover may have significant consequences.

**Compliance tip:** We are likely to look at whether the adviser has considered the costs and benefits of the following options for the client, including:

* not fully closing down the client’s existing APRA-regulated superannuation fund to maintain their existing life and TPD insurance cover
* not holding any life and TPD insurance, or
* replacing existing cover with a new insurance policy taken out by the SMSF on behalf of some or all of the members of the SMSF.

We are likely to be particularly concerned if:

* the client had an existing life and TPD insurance policy, but the adviser did not consider the risk of losing this cover when recommending the establishment of an SMSF
* there was no consideration of the client’s life and TPD insurance needs when they are not yet a retiree and have not accumulated a superannuation balance to be sufficiently self-insured.

## **Access to complaints mechanisms**

Retail clients should understand that certain dispute resolution mechanisms, such as the Superannuation Complaints Tribunal (SCT), may not be available to SMSFs.

However, the types of disputes and complaints that may arise for SMSF investors may be different from those in an APRA-regulated superannuation fund, and access to other complaints mechanisms may be available to SMSF investors (e.g. the Financial Ombudsman Service Limited or the Credit and Investments Ombudsman).

**Compliance tip:** We are likely to look at whether the adviser has explained that in switching to an SMSF, the client will not be able to access certain dispute resolution mechanisms (e.g. the SCT).

## 

## **The appropriateness of different SMSF structures**

Advisers should consider and advise a retail client on the most appropriate SMSF structure when establishing an SMSF. Selecting the most appropriate structure (i.e. a corporate or individual trustee structure) can have important tax and succession planning implications for clients. It can also be costly to change structures, ownership of assets and trustees after the SMSF has been established.

**Compliance tip:** We are likely to look at whether clients have been adequately advised on SMSF structures. We are likely to be particularly concerned if a client has been directed to an SMSF without consideration of the appropriateness of the SMSF structure, or if the client has been directed to a particular type of SMSF structure without consideration of its appropriateness.

## 

## **Trustee obligations and the time and skills necessary to operate an SMSF**

An SMSF is not for every retail client, even if they do have a significant amount to invest. Factors such as their financial literacy, understanding of the legal, taxation and other requirements, available time and general interest are all things to be considered. SMSF trustees need to understand the obligations associated with undertaking the role.

Obligations with which SMSF trustees must comply under superannuation and taxation laws include:

* maintaining the fund for the sole purpose of providing retirement benefits to SMSF members, or to their dependants if a member dies before retirement
* accepting contributions and paying benefits (pension or lump sums) to members and their beneficiaries in accordance with superannuation and taxation laws and the SMSF trust deed
* valuing the fund’s assets at market value for the preparation of financial accounts and statements
* having the financial accounts and statements for the SMSF audited each year by an approved SMSF auditor
* meeting the reporting and administration obligations imposed by the Australian Taxation Office (ATO).

Failure to comply with obligations under superannuation and taxation laws can have significant consequences (e.g. the loss of tax concessions). Even if one trustee is less actively involved, all trustees are equally required to comply with these trustee responsibilities and obligations and are liable for the actions of other trustees.

Advisers should consider whether an SMSF is appropriate for a retail client in terms of the time and skills that may be needed to operate the SMSF and to generate the expected benefits. Clients may outsource some of these functions if they do not have the time and relevant skills, such as investment management and administration of the SMSF. However, trustees are still ultimately responsible for the operation of the SMSF. Advisers should ensure clients are aware of this and consider whether the client is prepared to accept these responsibilities and obligations as an SMSF trustee.

Retail clients should be made aware that the degree of time and skill required may depend on how they choose to stay updated on current developments or changes in superannuation and taxation laws and/or whether they choose to operate their SMSF without the assistance of SMSF professionals.

There may be other options available for clients who may not be prepared to take on the responsibilities and obligations of an SMSF trustee. These options may still provide some of the benefits of an SMSF, such as a ‘member direct investment facility’ within an APRA-regulated fund.

**Compliance tip:** We are likely to look at whether clients have been adequately advised about the time, skills and obligations necessary to operate an SMSF and that, even if they outsource some aspects of managing the fund, they will remain ultimately responsible for complying with their responsibilities and obligations.  
  
We are likely to be particularly concerned if an SMSF has been recommended to a client and there has been no consideration of whether they have the time, skills and knowledge to operate an SMSF or whether they are able to appropriately develop their skills and knowledge to operate an SMSF.

## 

## **Trustee obligations to develop an investment strategy**

Under superannuation laws, SMSF trustees must develop an investment strategy to ensure the SMSF is likely to meet members’ retirement needs. Such a strategy may consider whether the members of the fund have other retirement or investment savings they can draw on outside the SMSF and whether the SMSF’s investments are appropriately diversified.

SMSF trustees should conduct a regular review of the fund’s investment strategy to ensure it remains current. It is important that trustees understand:

* the benefits associated with 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, such as improving the risk and return profile of an SMSF
* there are some restrictions on SMSF investments
* certain transactions are prohibited, such as lending the fund’s money, or providing financial assistance, to a member of the fund or their relatives.

Where a limited recourse borrowing arrangement is recommended, trustees should be provided with an explanation of the associated risks and how this arrangement is appropriate for the SMSF.

**Compliance tip:** We are likely to look at what advice clients receive about their SMSF investment strategy and whether or not the advice was appropriate to the risk appetite and investment goals of the client.

## 

## **The need to consider an exit strategy**

Trustees may want to wind up their SMSF for a wide range of reasons (e.g. if the compliance requirements become too onerous or costly, or the more active trustee dies or becomes incapacitated). To make any exit as straightforward as possible, it is important that trustees consider and develop an exit strategy for their SMSF.

**Compliance tip:** We are likely to look at whether clients have been made aware of what may be required to wind up their SMSF and the likely costs involved.

## 

## **Additional information to be included in an SOA**

If the advice is to switch from an existing superannuation fund to an SMSF, section 947D of the Corporations Act sets out the additional information that must be included in an SOA. Specifically, the SOA must set out the potential benefits that may be lost and any other significant consequences to the retail client if the advice is acted upon.

Examples include information about:

* the exit fees or any other charges applying to withdrawal from the APRA-regulated superannuation fund
* the loss of access to rights or benefits (e.g. insurance cover and eligibility for statutory compensation under superannuation laws in the event of theft or fraud in the underlying investment asset)
* the loss of other opportunities, including incidental opportunities associated with the existing product (e.g. access to free financial advice or discount health insurance)
* any tax consequences
* any other significant consequences for the client in changing their superannuation to an SMSF.

[INFO 182](http://asic.gov.au/regulatory-resources/superannuation-funds/superannuation-advice/super-switching-advice-complying-with-your-obligations-info-182/) provides general information and compliance tips for financial advisers who provide ‘super switching advice’.

**Compliance tip:** We are likely to look more closely at advice to switch to an SMSF if the SOA does not clearly set out considerations (in addition to the costs) relevant to setting up, operating and winding up an SMSF.

# Advice on self-managed superannuation funds: Disclosure of costs

## **INFO 206**

This information sheet (INFO 206) provides guidance for Australian financial services (AFS) licensees (including limited AFS licensees) and their representatives who provide personal advice to retail clients about self-managed superannuation funds (SMSFs).

It explains:

* [the relevant conduct and disclosure obligations](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-costs/#relevant-conduct-and-disclosure)
* the need for advice on [the cost-effectiveness of an SMSF](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-costs/#cost-effectiveness) – in particular, if the starting balance is below $200,000
* the need for advice on [the costs of setting up, operating and winding up an SMSF](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-costs/#costs-of-setting-up-operating-winding-up-smsf)
* the need for advice on [the continued suitability of an SMSF for the client](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-costs/#continued-suitability-of-an-smsf).

It provides ‘compliance tips’, which indicate the factors that ASIC is likely to look more closely at as part of our surveillance activities.

It should also help AFS licensees and their representatives comply with the conduct and disclosure obligations in Parts 7.7 and 7.7A of the Corporations Act 2001 (Corporations Act).

It focuses on the costs associated with setting up, operating and winding up an SMSF, and should be read with Information Sheet 182 Super switching advice: Complying with your obligations ([INFO 182](http://asic.gov.au/regulatory-resources/superannuation-funds/superannuation-advice/super-switching-advice-complying-with-your-obligations-info-182/)) and Information Sheet 205 Advice on self-managed superannuation funds: Disclosure of risks ([INFO 205](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/)).

The disclosures referred to in this information sheet should be provided to a retail client at the time of the advice – this will usually be by way of a Statement of Advice (SOA). However, as a matter of best practice, AFS licensees and their representatives should also give these disclosures to retail clients in person, regardless of whether the advice is (or will be) set out in an SOA.

## **Relevant conduct and disclosure obligations**

Relevant conduct and disclosure obligations include:

* the best interests duty and related obligations, which require advice providers, when providing personal advice to retail clients, to:
* act in the best interests of the client (section 961B)
* provide appropriate personal advice (section 961G)
* warn the client if advice is based on incomplete or inaccurate information (section 961H)
* prioritise the interests of the client (section 961J)
* the requirement to give retail clients an SOA when personal advice is provided (section 946A) – if the SOA is not the means by which personal advice is provided, the SOA must be given as soon as practicable after the advice has been provided but, in any event, before the client acts on the advice (section 946C)
* the additional information that must be included in an SOA when the advice recommends replacing one product with another (switching advice) (section 947D).

When giving advice to retail clients on establishing and/or switching to an SMSF, clients should be advised on the risks and costs associated with setting up and/or switching to an SMSF.

Some examples of costs that should be considered by an adviser and disclosed to retail clients are set out below. For examples of the risks that should be considered and disclosed, see [INFO 205](http://asic.gov.au/regulatory-resources/financial-services/giving-financial-product-advice/advice-on-self-managed-superannuation-funds-disclosure-of-risks/).

## **Advice on the cost-effectiveness of an SMSF**

An important consideration is whether the likely balance of the SMSF makes it cost-effective for the client. If it is not cost-effective, it is very unlikely to be in the client’s best interests.

### **Starting balances below $200,000**

In many cases, a recommendation for a retail client to set up an SMSF with a starting balance of $200,000 or below is unlikely to be in the client’s best interests. The costs of establishing and operating an SMSF with a balance of $200,000 or below are unlikely to be competitive, compared to a fund regulated by the Australian Prudential Regulation Authority (APRA). Therefore, the client may not be in a better position when compared to using an APRA-regulated superannuation fund.

**Note:** We arrived at the figure of $200,000 as a result of independent research from Rice Warner, our consultation on that research and our assessment on what may be an appropriate minimum starting balance for an SMSF.

However, there are circumstances where an SMSF with a starting balance of below $200,000 may be in the client’s best interests – for example:

* where the trustee is willing to undertake much of the administration of the SMSF and the management of the investments to make it more cost-effective, or
* where a large asset (e.g. business property or an inheritance) or funds in another superannuation account will be transferred into the fund within a short timeframe (e.g. within a few months) after the SMSF is set up.

There will also be circumstances when an SMSF with a starting balance of $200,000 or above is not in the client’s best interests because it does not meet their objectives, financial situation or needs. For example, the client may not have the skills, time or experience to adequately carry out the duties of a trustee.

Where advice is provided to establish an SMSF with a low balance, we would expect the advice to clearly set out:

* the circumstances that influence the adviser to believe the client is likely to end up in a better position, despite the SMSF having a low starting balance
* consideration of whether the SMSF’s intended investment strategy is appropriate and viable
* the reasons why setting up and operating an SMSF is in the best interests of the client.

**Compliance tip:** We are likely to look more closely at advice to establish an SMSF, to consider whether the advice complies with the best interests duty and related obligations, if the starting balance of the SMSF is below $200,000.

## **Advice on the costs of setting up, operating and winding up an SMSF**

There are many costs applicable to setting up, operating and winding up an SMSF that should be discussed with retail clients and set out in the advice. Matters that should be discussed and disclosed are:

* the costs that are expected to be incurred in establishing, operating and winding up an SMSF – in particular, which costs are unavoidable, as well as costs that may vary depending on how much of the SMSF’s administration the trustees are intending to undertake
* how the average annual operating costs of an SMSF compare with the annual administration costs of the client’s current superannuation fund or other APRA-regulated superannuation funds
* the cost of having professional service providers do some of the ongoing administration and management tasks for the SMSF.

### **Unavoidable versus optional costs**

Some costs applicable to setting up, operating and winding up an SMSF are unavoidable, while other costs are optional and depend on decisions the trustee makes. Examples of unavoidable costs include:

* the annual SMSF supervisory levy (collected by the Australian Taxation Office)
* the costs to produce an annual financial statement and tax return
* annual independent audit fees
* costs relating to the establishment of the SMSF, including costs for a trust deed
* the fee for annual actuarial certification (when required).

Optional costs cover a range of services related to the structuring and administration of an SMSF that many SMSF trustees choose to pay additional fees for. These include:

* establishment of a corporate trustee, including ASIC fees to establish a corporate entity and the annual corporate trustee fee
* ongoing SMSF administration costs, including the cost of amending the trust deed of the SMSF
* professional investment advice fees
* accounting and book-keeping fees
* investment management fees (these fees may be unavoidable depending on the type of investments made)
* costs relating to the winding up of an SMSF, including compliance costs and transaction costs related to realising assets.

Examples of the SMSF costs that should be considered by the adviser and discussed and disclosed in the advice are summarised in Table 1.

#### Table 1: Examples of SMSF costs

| Cost type | Examples |
| --- | --- |
| Costs associated with setting up an SMSF | Costs associated with setting up an SMSF that are:   * unavoidable: costs for a trust deed * optional: costs for establishing a corporate trustee, including the ASIC fee for establishing a corporate entity. |
| Ongoing costs associated with operating an SMSF | Costs associated with operating an SMSF that are:   * unavoidable: the annual SMSF supervisory levy (collected by the Australian Taxation Office), the annual independent audit fee, costs to produce an annual financial statement and tax return, and (when required) the fee for annual actuarial certification * optional: costs for amending the trust deed of the SMSF, professional investment advice fees, accounting and book-keeping fees, and investment management fees. |
| Types of costs associated with winding up an SMSF | Costs will include both compliance costs and costs related to realising assets. The nature of some of these costs will depend on the assets the SMSF invests in, but might include brokerage or agent fees. |
| The ‘opportunity cost’ associated with managing an SMSF | The time associated with managing an SMSF results in an ‘opportunity cost’ for the trustee. This cost is often overlooked as one of the costs associated with an SMSF structure. |
| Insurance costs | An employer’s default superannuation fund must offer a minimum level of life insurance, and so most investors will have some insurance cover through their APRA-regulated superannuation fund.  An SMSF’s investment strategy needs to consider whether the trustees of the fund should hold insurance cover for one or more members of the fund. The costs of obtaining such insurance through the SMSF may differ from the cost of holding similar insurance through an APRA-regulated superannuation fund because of, for example, the lack of any ‘bulk discount’ for the SMSF. |
| Investment costs | There will be costs associated with making investments through the SMSF. These costs will vary depending on the nature of the asset and also the frequency with which assets are bought and sold within the SMSF. |

**Compliance tip:** We are likely to look more closely at advice to set up or switch to an SMSF if the advice does not adequately disclose (including in the form of a comparison) or clearly set out the costs of setting up, operating and winding up an SMSF, noting which are unavoidable costs and which are optional costs. These costs should at least be described and, where possible, quantified.  
  
See INFO 205 for further examples/suggestions of what risks advisers should consider and disclose to retail clients when giving advice to set up an SMSF.

## **Advice on the continued suitability of an SMSF for the client**

Later advice should include an assessment of whether the client’s relevant circumstances are significantly different from when the initial advice to set up an SMSF was given. This includes considering the ongoing appropriateness of the SMSF.

For SMSFs established with a starting balance below $200,000, the later advice should also note whether the client is still expected to be in a better position. For example, if an SMSF was established with a balance below $200,000 on the expectation of a large asset being transferred to the SMSF within a few months, this could be confirmed in any subsequent SOA or Record of Advice (ROA): regulation 7.7.10AE of the Corporations Regulations 2001.

Further advice should also assess whether an SMSF that drops below $200,000 (e.g. while the SMSF is in pension phase) continues to be appropriate for the client.

The continued capacity, capability and time commitments of the client should also be considered.

**Compliance tip:** We are likely to look more closely at advice given to a client after a decision to set up or switch to an SMSF is made if the later advice does not clearly set out:

* how the adviser assessed whether the SMSF advice continues to be suitable for the client
* whether the SMSF continues to be suitable for the client.