



A NEW WORLD OF RESPONSIBILITY FOR
SMSF TRUSTEES - AUGUST 2007

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THE GROWTH AND GROWTH OF SMSFS

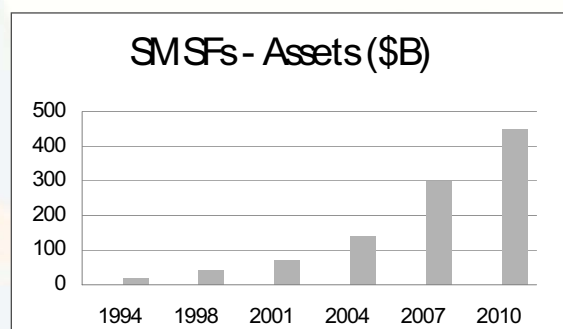
At the same time as the government's far reaching Simpler Super reforms came into existence on 1 July 2007, SMSFs celebrated their 13th birthday. It was only just over a decade ago that the SIS Act 1993 enabled small employer superannuation funds to choose to become SMSFs. In so doing, the trustees of these funds were provided with exemptions from a range of regulatory reporting.

In their early days, 70,000 small employer superannuation funds made the election to become SMSFs. These funds held \$11 billion in assets, primarily loans to employers and share investments. As people realised that commencing a SMSF allowed members to choose their own investments and control their superannuation destiny, their growth took off. In the early days there were a wide range of investment strategies that took the law to the edge.

In some cases, SMSFs acquired computers, cars, desks and leased these to member businesses. They were wild times and the regulator of the day - the Insurance and Superannuation Commission, which was set up to look after large employer superannuation funds had trouble coping. In the May 1998 Budget the government announced sweeping changes to the regulation of SMSFs including switching the regulation of these funds to the ATO. Some of the key changes included requiring all members to be trustees and funds having to limit any investment or loan to

related parties to less than 5%. At the time there were 110,000 SMSFs and \$42 billion in assets. Advisors at the time claimed that the changes would spell the death knell of SMSFs. But how they were wrong!

The Commissioner of Taxation came on the scene and to the relief of many took a softly, softly approach spending a great deal of resources educating trustees, accountants and other advisers. The softer approach provided reassurance for many accountants to continue to recommend that their clients commence a SMSF, particularly those with a small business.



Although the figures have yet to be published, industry commentators expect SMSFs to have reached the \$300 billion mark courtesy of the Simpler Super exemption allowing members to contribute up to \$1 million.

As the number and size of SMSFs grew the ATO moved onto the front foot with the Commissioner releasing his landmark publication "DIY Super It's your money but not yet." Over the past few years the Commissioner has made a number of SMSFs non-complying. This action results in the fund being subject to penalty tax at a rate of 45% based on the market value of the assets of the fund. For example if a SMSF has \$1.5 million in assets and the Commissioner makes the fund non-complying, the trustees would have to pay \$675,000 in tax - a big hole in anyone's retirement savings. The Commissioner has also recently resorted to removing trustees who have done wrong and replacing them with his own trustees. This has the effect of bringing the SMSFs into line with the members losing total control of their fund. A simple but effective dissuader!

The Commissioner has now more than 500 staff working on policing SMSFs and is starting to get tougher on trustees. From a softly, softly approach the Commissioner is now reminding trustees that SMSFs require a lot of work and more importantly responsibility. They cannot pass their responsibility on to their accountant, auditor or financial planner if anything goes wrong. It is the trustee's responsibility to know the laws and ensure that their compliance documentation, including the trust deed is up to date and current.

A big change in the regulation of SMSFs occurred on 1 July 2007 with the Commissioner releasing a declaration for *new trustees* only of an existing or new SMSF to sign in front of a witness. The declaration, which *may* become standard for *all SMSF trustees*, is far reaching with the signing trustee declaring amongst other things "*to keep myself informed of changes to the legislation relevant to the operation of my fund and ensure the trust deed is kept up to date in accordance with the law and the needs of the members.*"

With over 2,000 pages of law relating to SMSFs alone this is a tall order. Plus it reinforces the need for trustees to undergo regular if not annual upgrades of their SMSF trust deeds. As laws change, the fund's trust deed and rules of the fund must keep up to date - even more so with the arrival of the Simpler Super reforms.

The declaration goes on to emphasise what the Commissioner can do if the trustee does the wrong thing:

"The Commissioner of Taxation (the Commissioner) has the authority and responsibility for administering the legislation and enforcing the fund's compliance with the law.

If I do not comply with the legislation, the Commissioner may take the following actions:

- impose administrative penalties on me
- enter into agreements with me to rectify any contraventions of the legislation
- disqualify me from being a trustee or director of a corporate trustee of any superannuation fund in the future
- remove the fund's complying status resulting in a significant tax penalty on the fund, and
- prosecute me under the law, resulting in fines or imprisonment."

Because of its wide reaching impact, trustees need to read and understand the declaration and witnesses need to be careful as to what they are really witnessing. Copies of the declaration can be found at the ATO website - www.ato.gov.au or you can contact our office to obtain one.

We take SMSF education seriously and ensure that our SMSF trustee clients receive regular newsletters focussed on various SMSF issues. If you ever have any questions regarding your SMSF, your responsibilities or what the Simpler Super reforms mean to you don't hesitate to contact us - your SMSF specialists.

This information is general advice only and neither purports, nor is intended to be advice on any particular matter.

No responsibility can be accepted for those who act on the contents of this publication without first contacting us and obtaining specific advice.

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partners

Level 6, London House, 216 St Georges Terrace
Perth WA 6000
PO Box 7027 Cloisters Square Perth WA 6850
† 08 6311 6900 f 08 6311 6999
enquiries@cooperpartners.com.au
www.cooperpartners.com.au