

Trustee declaration

To be completed by new trustees and directors of corporate trustees of self-managed super funds.



Read this declaration in conjunction with *Self-managed super funds – Key messages for trustees* (NAT 71128).



WHO SHOULD COMPLETE THIS DECLARATION?

You must complete this declaration if you became, on or after 1 July 2007, a **new** trustee (or director of a corporate trustee) of:

- a **new** self-managed super fund (SMSF)
- an **existing** SMSF.

You must sign this declaration within 21 days of becoming a trustee or director of a corporate trustee of an SMSF.

A legal personal representative who holds an enduring power of attorney granted by a member may be a trustee or a director of the corporate trustee of the SMSF, in place of the member and is also required to complete and sign this declaration.

INFORMATION YOU NEED TO READ

Make sure you read *Self-managed super funds – Key messages for trustees* (NAT 71128). It highlights some of the key points from the declaration and some important messages for you.

BEFORE COMPLETING THIS DECLARATION

Before you complete and sign this declaration, make sure you:

- read each section
- understand all the information it contains.

➤ If you have any difficulties completing this declaration or you do not fully understand the information it contains:

- speak to a professional adviser
- visit **www.ato.gov.au**
- phone us on **13 10 20**.

If you're not familiar with some of the terms used in this declaration or you need more information, refer to *Running a self-managed super fund* (NAT 11032).

WHEN COMPLETING THIS DECLARATION

When you complete this declaration, remember to:

- insert the full name of the fund at the beginning
- sign and date it
- ensure it is signed and dated by a witness (anyone over the age of 18 years).

WHAT SHOULD I DO WITH THE DECLARATION?

You must keep your completed declaration for at least 10 years and make it available to us if we request it.

We recommend that you keep a copy of your completed declaration and *Self-managed super funds – Key messages for trustees* (NAT 71128) and refer to them when making important decisions, such as those relating to investments, making contributions and paying a pension or lump sum.

❗ Do not send your completed declaration to us.



Self-managed super fund trustee declaration

I understand that as an individual trustee or director of the corporate trustee of

Fund name

I am responsible for ensuring that the fund complies with the *Superannuation Industry (Supervision) Act 1993* (SISA) and other relevant legislation. 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, which may result in a significant tax penalty on the fund
- prosecute me under the law, which may result in fines or imprisonment.

I must 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.

SOLE PURPOSE

I understand it is my responsibility to ensure the fund is maintained for the purpose of providing benefits to its members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies.

TRUSTEE DUTIES

I understand that by law I must:

- act honestly in all matters concerning the fund
- exercise skill, care and diligence in managing the fund
- act in the best interests of all the members of the fund
- ensure that retirement benefits are only accessed by members upon a legitimate condition of release being met
- not enter into transactions that circumvent restrictions on the payment of benefits
- ensure that my money and other assets are kept separate from the money and other assets of the fund
- take appropriate action to protect the fund's assets (for example, have sufficient evidence of the ownership of fund assets)
- not enter into any contract or do anything that would prevent me from, or hinder me in, properly performing or exercising my functions or powers as a trustee or director of the corporate trustee of the fund
- prepare and implement an investment strategy that takes the whole of the fund's circumstances into account, which includes, but is not limited to
 - the risks associated with the fund's investments
 - the likely return from investments, taking into account the fund's objectives and expected cash flow requirements
 - investment diversity and the fund's exposure to risk due to inadequate diversification
 - the liquidity of the fund's investments having regard to the fund's expected cash flow requirements in discharging its existing and prospective liabilities
- allow all members of the fund to have access to information and documents as required, including details about
 - the financial situation of the fund
 - the investments of the fund
 - the members' benefit entitlements.

Investment restrictions

I understand that, as a trustee or director of the corporate trustee of the fund, subject to certain limited exceptions specified in the law, I am prohibited from the following:

- lending money of the fund to, or providing financial assistance to, a member of the fund or a member's relative (financial assistance means any assistance that improves the financial position of a person directly or indirectly, including the provision of credit)
- acquiring assets (other than listed securities, business real property, in-house assets, mergers and special determinations) for the fund from members or other related parties of the fund
- borrowing money (or maintaining an existing borrowing) on behalf of the fund except in certain limited recourse borrowing arrangements
- having more than 5% of the market value of the fund's total assets at the end of the income year as in-house assets (these are loans to, or investments in, related parties of the fund (including trusts) or assets subject to a lease or lease arrangement between the trustee and a member, relative or other related party)
- entering into investments on behalf of the fund that are not made or maintained on an arm's length (commercial) basis (this ensures the purchase or sale price of the fund's assets reflects their market value).

Accepting contributions and paying a benefit

I understand that I can only accept contributions and pay benefits (pensions or lump sums) to members or their beneficiaries when the conditions specified in the law and the fund’s trust deed have been met.

Administration

I understand that the trustees of the fund must:

- keep and retain for at least 10 years
 - minutes of all trustee meetings at which matters affecting the fund were considered (this includes investment decisions and decisions to appoint members and trustees)
 - records of all changes of trustees, including directors of the corporate trustee
 - each trustee’s consent to be appointed as a trustee of the fund or a director of the corporate trustee
 - all trustee declarations
 - copies of all annual returns lodged
 - copies of all reports given to members
- ensure that the following are prepared and retained for at least five years
 - an annual statement of the financial position of the fund
 - an annual operating statement
 - accounts and statements that accurately record and explain the transactions and financial position of the fund
- notify the ATO within 28 days of any changes in the
 - membership of the fund, trustees, directors of the corporate trustee or members of the fund
 - name of the fund
 - details of the contact person and his/her contact details
 - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing as soon as practicable (not later than 28 days) after becoming aware that the fund has ceased to be a SMSF or ceased to exist
- notify the ATO in writing within 28 days of the fund being wound up
- ensure that an approved auditor is appointed to audit the fund for each income year and provide that auditor with documents as requested
- lodge the fund’s annual return by the due date.

DECLARATION

By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund’s name changes, that name). I understand that:

- I must ensure this document is retained for at least 10 years or while I remain a trustee or director of the corporate trustee (whichever is longer) and, if I fail to do this, penalties may apply
- I may have to make this document available for inspection by a member of staff of the ATO and, if I fail to do this, penalties may apply.

Trustee’s or director’s name

Trustee’s or director’s signature

Date

Day: / Month: / Year:

Witness’ name (witness must be over the age of 18 years)

Witness’ signature

Date

Day: / Month: / Year: