

# Trustee declaration

To be completed by 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 become 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 separate declaration is required to be completed and signed by each and every new trustee.

You must also complete the declaration if you are a legal personal representative who has been appointed as trustee (or director of a corporate trustee) on behalf of a:

- member who is under a legal disability (usually a member under 18 years old)
- member for whom you hold an enduring power of attorney
- deceased member.

## 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](http://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 YOU 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 refer to it and *Self-managed super funds – key messages for trustees* (NAT 71128), which is available on the ATO website, when making important decisions, such as those relating to choosing investments, accepting contributions and paying benefits.

❗ Do not send your completed declaration to us

- 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 and any earnings from those assets reflects their market value).

### Accepting contributions and paying a benefit

I understand that I can only accept contributions and pay benefits (income streams or lump sums) to members or their beneficiaries when the conditions specified in the law and the fund 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 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
  - copies of all annual returns lodged
  - accounts and statements that accurately record and explain the transactions and financial position of the fund
- ensure that an approved auditor is appointed within the prescribed period (currently this is no later than 31 days before the due date for lodgment of the fund's annual return but this may change to 45 days) to audit the fund for each income year, and provide that auditor with documents as requested
- lodge the fund's annual return, completed in its entirety, by the due date
- notify the ATO within 28 days of any changes to the
  - membership of the fund, or trustees or directors of the corporate trustee
  - name of the fund
  - contact person and their contact details
  - postal address, registered address or address for service of notices for the fund
- notify the ATO in writing within 28 days of the fund being wound up or after becoming aware that the fund has ceased to be an SMSF.

### DECLARATION

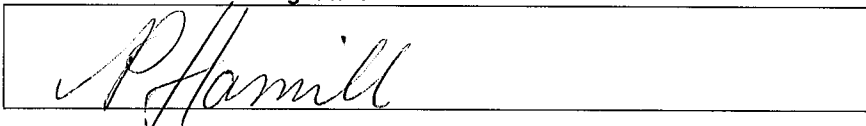
By signing this declaration I acknowledge that I understand my duties and responsibilities as a trustee or director of the corporate trustee of the self-managed superannuation fund named on this declaration (or if the fund's name changes, that name). I understand that:

- 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.
- I do not have access to the government's financial assistance program that is available to trustees of Australian Prudential Regulation Authority (APRA) regulated funds in the case of financial loss due to fraudulent conduct or theft.

Trustee's or director's name

PAMELA MARGARET HAMILL

Trustee's or director's signature

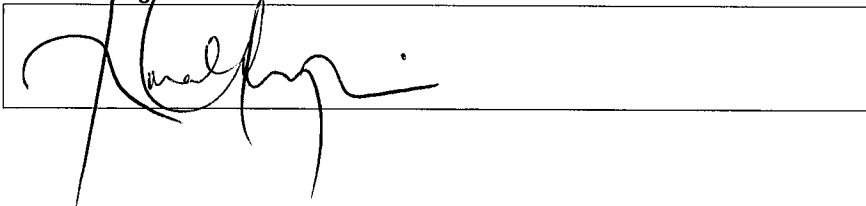


Date

Day 05 / Month 05 / Year 2016

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

Witness' signature



Date

Day 5 / Month 5 / Year 16



## Self-managed super fund trustee declaration

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

Fund name

NT GENERAL STORES PTY LTD SUPERANNUATION FUND

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.

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.

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 significant adverse tax consequences for the fund
- prosecute me under the law, which may result in fines or imprisonment.

### SOLE PURPOSE

I understand it is my responsibility to ensure the fund is only maintained for the purpose of providing benefits to the members upon their retirement (or attainment of a certain age) or their beneficiaries if a member dies. I understand that I should regularly evaluate whether the fund continues to be the appropriate vehicle to meet this purpose.

### TRUSTEE DUTIES

I understand that by law I must at all times:

- 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 members only access their super benefits if they have met a legitimate condition of release
- refrain from entering 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)
- refrain from entering 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
- 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.

I also understand that by law I must prepare, implement and regularly review an investment strategy having regard to all the circumstances of the fund, which include, but are 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 (including benefit payments)
- whether the trustees of the fund should hold insurance cover for one or more members of the fund.

### 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:

- 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 business real property, listed securities, certain in-house assets and acquisitions made under mergers allowed by special determinations or acquisitions as a result of a breakdown of a relationship) 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 circumstances (while limited recourse borrowing arrangements are permitted, they can be complex and particular conditions must be met to ensure that legal requirements are not breached)

# Trustee declaration

To be completed by 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).

\* Note Roger Hamill  
already a Trustee prior 1/7/07  
no need to complete Trustee declaration

Janet  
19/5/17





## Self-managed super fund trustee declaration

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Fund name

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- *I do not have access to the government's financial assistance program that is available to trustees of Australian Prudential Regulation Authority (APRA) regulated funds in the case of financial loss due to fraudulent conduct or theft.*

**Trustee's or director's name**

ROGER HAMILL

**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

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## THE AUSTRALIAN

## ATO's trustee declaration has its hazards



ASIC - Cop - Man with arms behind his back with his hands handcuffed. Picture: News Bloomberg

DIY SUPER: TONY NEGLINE THEAUSTRALIAN 12:00AM August 3, 2011

FROM July 2007 all new trustees of self-managed super funds have had to sign a trustee declaration.

The declaration was designed by the Australian Taxation Office and its purpose is to obtain the formal acknowledgment from new SMSF trustees that they understand their duties.

The ATO says the form gives it "a better assurance" those trustees are "aware of their obligations and responsibilities".

The declaration must be signed within 21 days of someone becoming a SMSF trustee and they must keep a copy for at least 10 years.

Between July 2007 and March this year there have been about 187,000 new SMSF trustees, or about 22 per cent of the total SMSF membership of 850,000 members.

For any trustee who has signed this declaration it would be difficult to argue that they didn't know the big-ticket items of running their super fund. In other words, it would be hard say that a mistake was accidental.

What does the declaration say?

It's broken down into five main sections. The first asks a trustee to concede that if they don't comply with the law the ATO can impose various draconian penalties on the trustee, including fines and bans.

The tax office can also disqualify a trustee or declare a fund to be non-complying, which means a fund would face significant tax penalties.

A trustee can also be prosecuted, leading to possible fines and even imprisonment.

The next section of the declaration deals with the sole-purpose test.

It says a trustee needs to understand that it is their 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".

While the declaration needs brevity, this is an unfortunate summary of the sole-purpose test.

The test actually contains two limbs: core purposes and ancillary purposes.

All super funds must satisfy at least one core purpose, which are summarised in the trustee declaration.

Unfortunately, the ancillary purposes, which are voluntary, have been ignored.

The next section of the declaration asks a trustee to verify that they understand their overriding duties and responsibilities.

These are that a trustee must act honestly and exercise skill, care and diligence in managing the fund.

A trustee must also make sure member benefits are only withdrawn when permitted by the super laws, and not do anything that circumvents the payment of these benefit rules. Given the constant (but numerically small number of people involved) scourge of illegal early release of super benefits, this is an important point.

A trustee must say they understand that the assets of the super fund must be kept separate from their personal assets. It's very easy for trustees to accidentally mix up their super-fund assets with their personal ones, and some care and vigilance need to be exercised. This is especially the case for individual trustees.

Taking appropriate action to protect a super fund's assets is the next trustee duty and includes making sure there is sufficient evidence that the ownership of fund assets is clear. This point would also cover the need to make sure there is adequate insurance.

Trustees must also declare that they will prepare an investment strategy for the fund that takes into account all the circumstances of the fund and considers the risks of each fund investment, the likely returns of these investments, the diversity of assets held and the likely liquidity the fund will need in the future.

This is a super law requirement and tends to cause many trustees a great deal of confusion.

This section on trustee duties is finished by asking trustees to state if they know that they must provide access to fund information, such as financial accounts, to all fund members.

The next section of the ATO trustee declaration deals with specific super law investment restrictions. These include that SMSF trustees cannot borrow money (other than approved super gearing loans), lend money to fund members or their relatives, purchase assets from fund members (other than certain exceptions) and other related parties, and the need to invest on an arm's-length basis.

Trustees are also required to state that they will not accept super contributions or pay a member benefit unless the super laws permit.

Finally, trustees are asked to acknowledge a range a super-law administrative requirements including that they must keep certain fund records for at least 10 years, have the fund audited annually by an appropriately qualified auditor and notify the ATO about any important changes to the trusteeship or membership of the fund within 28 days.

No doubt in many cases trustees who make a mistake will argue that they didn't understand, or took insufficient notice of the declaration that they were making.

Typically, a dim view is taken of this type of defence.

Tony Negline may be contacted at [www.atcbiz.com.au](http://www.atcbiz.com.au)

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