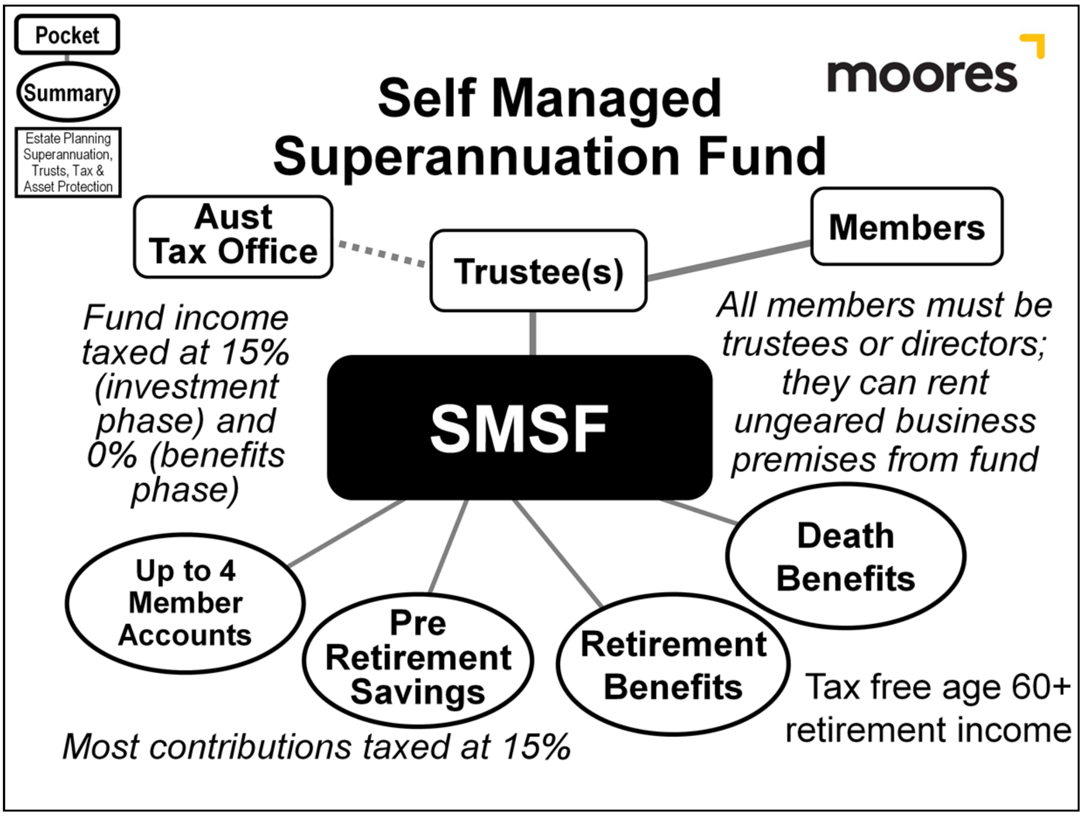


Major Reasons for a Self Managed Superannuation Fund ("SMSF")

Members control an SMSF and (subject to sole purpose test and other restrictions of Australian law) can choose investments (including own business premises). # Lower administrative costs – providing there are sufficient level of funds in member accounts to meet relatively fixed operating costs. # Member choice as to recipient of death benefit and terms of death benefit nomination.

Trustee(s)

The trustees are responsible for the administration of the SMSF. Each member must be a trustee or a director of the trustee company. Non-member trustees or directors are only permitted if they are the legal personal representative of a member or as a 2nd individual trustee or director for a sole member SMSF.

Australian Taxation Office ("ATO")

Has prudential responsibility for all SMSFs and can demand to receive audited annual returns prepared on a current market value basis.

Income, Capital profits, Benefits, Pensions and Annuities

The trustee is taxed on all fund income at 15% (contributions and investment phase – 10% for most taxable capital gains) and 0% (benefits phase). Contributions are also generally taxed at 15% to the extent that the employer or self employed member has been able to claim an income tax deduction. Both those concessional contributions and non-concessional contributions are subject to annual limits. Benefits are paid by way of a lump sum, pension or annuity.

Restrictions

The trustee must formulate and review an investment policy for the fund in the light of the circumstances of the members. Significant constraints apply to the operation of the fund, eg sole purpose test, borrowing and lending restrictions and in-house asset restrictions (not applicable to business premises).

Pocket

Summary

Estate Planning Superannuation, Trusts, Tax & Asset Protection

moores

Super – Key Phases & Decisions

Contributions & investment phase, eg choice of members, trustees & investments, level of contributions, dealing with borrowing & lending restrictions, insurance cover for members

Decisions near, **at or post retirement**, eg pension/annuity (reversionary or non-reversionary) v lump sum

Benefits phase (tax free income if over 60 years of age)

Decisions re death benefits – planning opportunities & lump sum tax – reversionary & new pensions/annuities for some dependants or lump sums to dependants or member's estate

Role of Superannuation

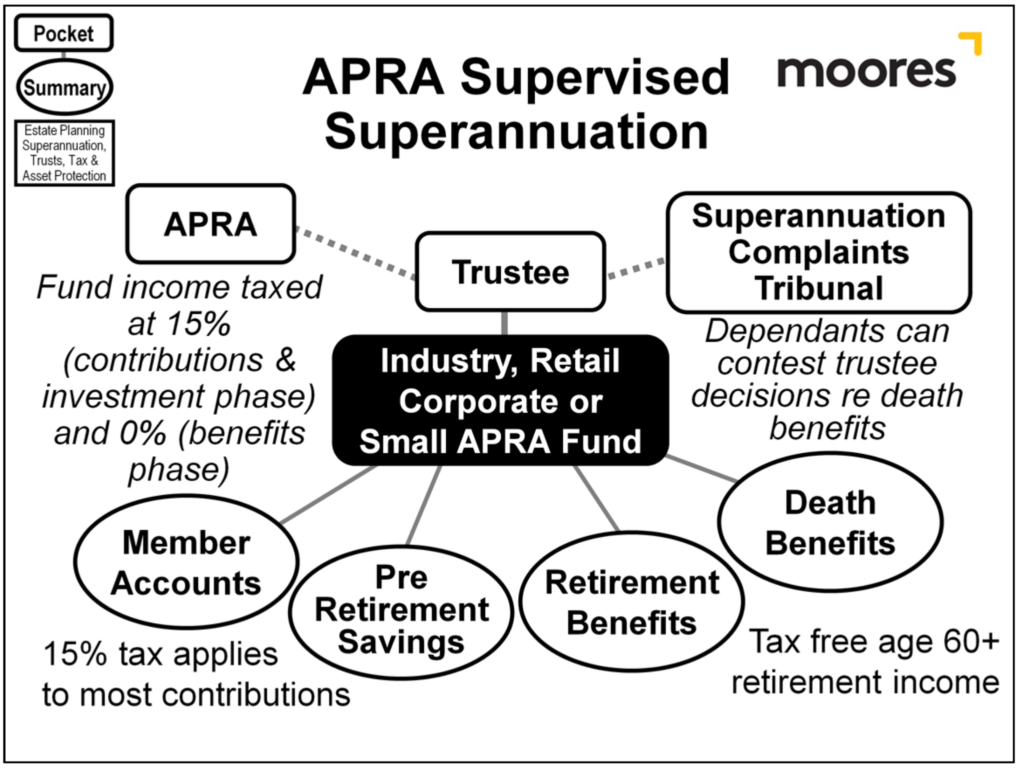
The role of Australian superannuation funds is to enable and encourage fund members to provide for their retirement and for the financial care of a member's dependants in the event of death. To this end, the ability of people to access their money once in the fund is restricted and complex laws govern the funds and their administration and audit. On the other hand, there are considerable taxation incentives to encourage the use of superannuation. Mandatory contribution levels also apply in respect of contributions made on behalf of employees.

Thus the operation of a superannuation fund is in 2 parts, a contributions and investment phase where the funding for retirement or death benefits is accumulated and a benefits phase where the member receives a concessionally taxed income stream (eg a pension) and/or a lump sum.

Control of Superannuation

Historically, in contrast to most other investment and business structures, superannuation funds have operated in a very paternalistic environment with members having little direct or indirect control over the administration, investment policy, payment of benefits or even choice of a superannuation fund. Progressive reforms to superannuation have meant the supervision industry is progressively moving towards an environment of greater accountability to members and choice between:

- different types of non-member controlled (or APRA supervised superannuation funds), eg corporate, industry and retail funds – all reporting to the Australian Prudential Regulation Authority
- SMSFs – reporting to the Australian Taxation Office.



Major Reasons for an APRA Supervised Superannuation Fund

Administration – costs spread across all members. # Discounted premiums for life insurance policies can be available. # Independent decision making in relation to investments. # Compulsion – some industry awards or employment agreements do not permit employees to choose between superannuation funds. #•Unlike SMSFs, more than 4 members permitted. # Majority of members may live outside Australia. #•Member lacks decision making capacity and is represented by a professional trustee. # Most funds often portability, ie the ability to transfer from fund to fund.

Trustee

The trustee is responsible for the administration of the fund. Any member control is usually limited to relatively restricted nominations regarding death benefits.

Australian Prudential Regulation Authority ("APRA")

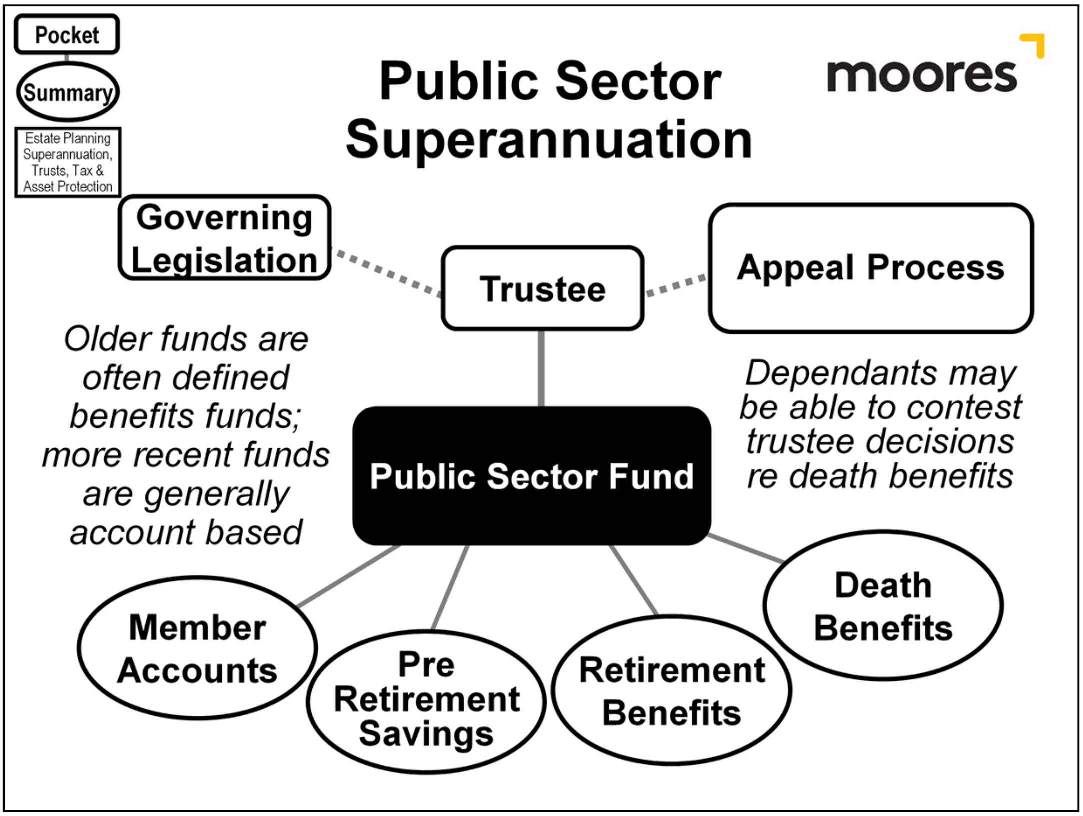
Has prudential responsibility for all superannuation funds other than SMSFs and most public sector funds and must receive audited annual returns prepared on a current market value basis.

Income, Capital profits, Benefits, Pensions and Annuities

The trustee is taxed on all fund income at 15% (contributions and investment phase – 10% for most taxable capital gains) and 0% (benefits phase). Contributions are also taxed at 15% to the extent that the employer or self employed member has been able to claim an income tax deduction and both those concessional contributions and most other (non-concessional) contributions are subject to annual limits. Benefits are paid by way of a lump sum, pension or annuity.

Restrictions

The trustee must formulate and review an investment policy for the fund in the light of the circumstances of the members. Significant constraints apply to the operation of the fund, eg sole purpose test and borrowing and lending restrictions.



Public Sector Superannuation Funds

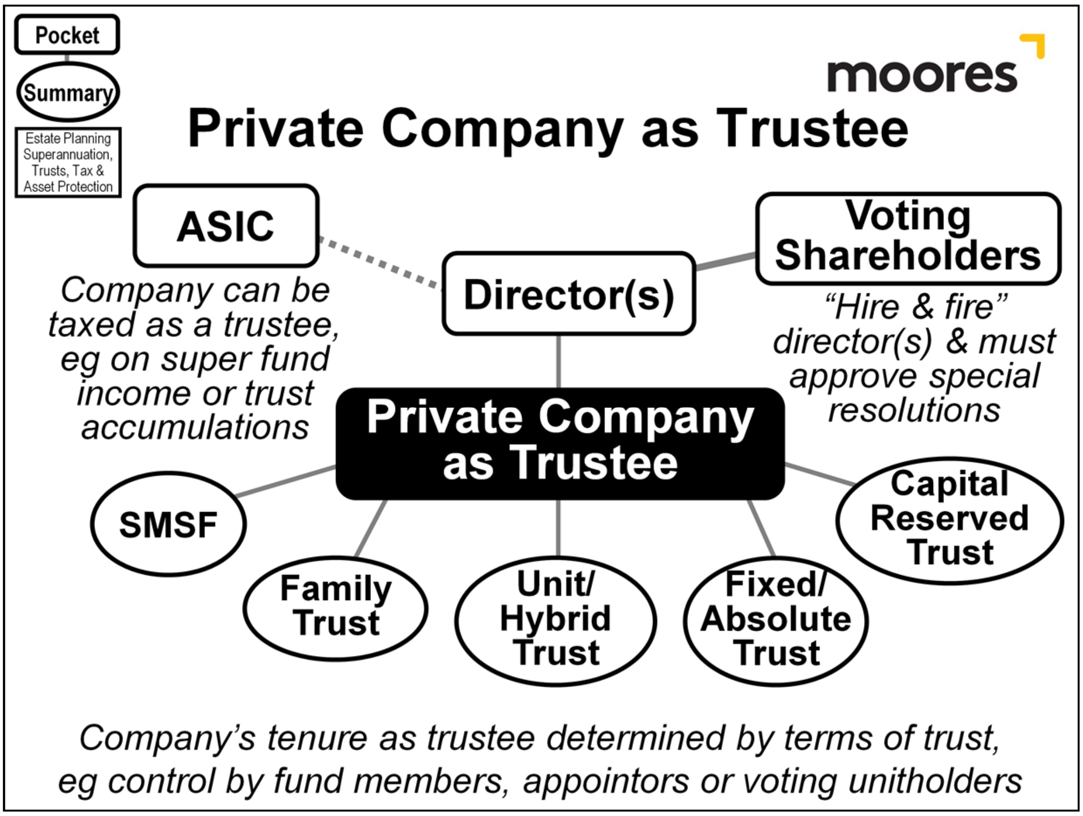
In the days of non-compulsory Australian superannuation, the majority of Australians who were members of superannuation funds were members of federal, state or territory public sector superannuation funds. Most of these public sector funds were defined benefits funds paying lifetime or other term pensions in either partly reversionary or non-reversionary form. The funding for many of these defined benefit funds was, in part at least, deferred until the need to pay pensions and death benefits materialised, leaving federal, state and territory governments with the need to find that funding at a later date.

Since the advent of compulsory superannuation, major changes have taken place with public sector superannuation. Most of the defined benefit funds were closed to new members in the 1980s and early 1990s and more recent public servants have directed to account based public sector funds or (gradually) allowed to choose to have their employer contributions made to APRA supervised funds or SMSFs.

Key differences, however, remain between public sector and APRA supervised funds, eg most public sector funds, while subject to the same income tax provisions that govern non-public sector superannuation,:

• are governed by federal, state or territory legislation in relation to their administration (rather than by the *SIS Act* and the *SIS Regs*) – this means that the rules governing binding death benefit nominations (if permitted) may be quite different in a public sector fund to those governing APRA supervised funds

• have their own dispute resolution process, rather than allowing dependants of fund members to have access to the SCT.



Major Reasons for a Corporate Trustee of an Australian SMSF or Trust

Clear delineation between personal and self managed superannuation fund ("SMSF") or trust ownership of assets. # No need to change legal ownership if a member, beneficiary or unitholder dies or ceases to be involved. # Limited liability for shareholders – not responsible for debts of the company unless a personal guarantee has been given – a company usually has an indemnity against the assets of the fund or trust for expenses and liabilities legitimately incurred. #•Degree of limited liability for directors – can be very important that company does not continue to trade while insolvent. # Removes the need for a second trustee of a single member SMSF.

Director(s)

Administer the fund or trust (and are also responsible for the company's own compliance obligations, eg annual ASIC returns. Private companies can have a single director and shareholder if permitted by company constitution. In the event that a single director dies or loses decision making capacity, under subsection 201F(2) of the *Corporations Act 2001*, the director/shareholder's legal personal representative can appoint a replacement director.

Taxation

The liability of the company to pay tax on behalf of the SMSF or trust varies, depending on both the tax legislation and the type of trust. For example, if GST is applicable, all trustees will need to lodge returns and pay GST. On the other hand, a trustee of an SMSF pays income tax on behalf of the fund in contributions and investment phase and withholds and remits tax in respect of certain death benefit payments, but non-superannuation trusts only pay income tax on accumulated income and allocations to minor or other beneficiaries lacking capacity.