

PS LA 2026/1 - Self-managed superannuation funds - education directions for contraventions of the Superannuation Industry (Supervision) Act 1993

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Self-managed superannuation funds – education directions for contraventions of the *Superannuation Industry (Supervision) Act 1993*

This Practice Statement provides guidance to staff about whether to give a trustee or a director of a body corporate that is a trustee of an SMSF an education direction under section 160 of the *Superannuation Industry (Supervision) Act 1993*.

This Practice Statement is an internal ATO document and is an instruction to ATO staff.

1. What this Practice Statement is about

This Practice Statement sets out what you need to consider when deciding whether to give a trustee or a director of a corporate trustee of a self-managed superannuation fund (SMSF) an education direction under section 160 of the *Superannuation Industry (Supervision) Act 1993* (SISA).

All further legislative references in this Practice Statement are to the SISA, unless otherwise indicated.

2. Compliance treatments – general principles

We are responsible for ensuring SMSF trustees comply with relevant tax and super laws, as well as dealing effectively with those who fail to do so.

This role is fundamental in ensuring the preservation of retirement benefits and protecting the integrity of the superannuation system. Our role also ensures tax concessions available within superannuation are appropriately targeted towards those who choose to operate within the regulatory framework.

In carrying out this role, the SISA provides a range of compliance options to deal with conduct which has resulted in contraventions of the SISA or the *Superannuation Industry (Supervision) Regulations 1994* (SISR). One such option is to give an education direction.

Generally, giving an education direction will play an essential role in cases where the person's lack of knowledge or understanding of their obligations contributed to the contraventions. There are important and positive benefits to giving an education direction, including¹:

- correcting knowledge gaps which led to past contraventions
- improving and refreshing overall trustee knowledge, thereby reducing the likelihood of any future contraventions occurring.

You may also use other compliance options alongside an education direction. The appropriateness of any additional compliance options you choose will depend on the circumstances of each case and the nature and seriousness of the conduct giving rise to the contraventions.

The compliance options you might commonly use in combination with an education direction include:

- imposing administrative penalties²
- giving a rectification direction³
- accepting a written undertaking from the trustee to rectify the contravention.⁴

3. What an education direction is

An education direction is a written notice we give to a person which, within a specified period, requires them to⁵:

- undertake an approved SMSF trustee education course, and
- provide us evidence that the course was completed.

A person given an education direction must also sign (or re-sign) an SMSF trustee declaration form within 21 days of completing the education course.⁶ This is to confirm that they understand their obligations and duties as a trustee of an SMSF.

4. Circumstances in which an education direction can be given

You may give an education direction to a person where, on or after 1 July 2014, there has been a

¹ See paragraphs 2.54 and 2.55 of the Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2014 Measures No. 1) Bill 2014.

² See subsection 166(1).

³ See section 159.

⁴ See section 262A.

⁵ See subsections 160(2) and (3).

⁶ See section 104A.

contravention of a provision in the SISA (other than Part 3B) or the SISR.⁷

You can only give an education direction to⁸:

- an individual trustee of an SMSF, where you reasonably believe the trustee has contravened a provision of the SISA (other than Part 3B) or the SISR, or
- a director of a body corporate that is trustee of an SMSF, where you reasonably believe that the
 - director has contravened a provision of the SISA (other than Part 3B) or the SISR, or
 - body corporate, as trustee of the SMSF, has contravened a provision of the SISA (other than Part 3B) or the SISR.

You may reasonably believe a contravention of the SISA or the SISR has occurred if someone closely connected to the fund (such as a trustee or approved auditor) has reported it to us and your understanding of the relevant facts and evidence is consistent with what has been reported. However, a mere suspicion that a contravention has occurred is not sufficient. In such cases, you would need to gather more information before you can conclude a contravention has occurred.

You cannot give a direction to a person who:

- is no longer an individual trustee or director of the corporate trustee of an SMSF at the time you are deciding whether to issue a direction
- became a trustee or director of the corporate trustee of an SMSF after the contravention occurred.

5. Considerations when deciding whether to give an education direction

You should consider both case-specific factors and the ATO's general decision-making principles when deciding whether to give an education direction.

General principles

You should complete your decision by considering the following general principles in the:

- [ATO Charter](#) – which requires that taxpayers be treated fairly and reasonably
- [Compliance model](#) – which helps in choosing the most appropriate compliance response, depending on the trustee's behaviour and circumstances, and

⁷ See [history note](#) to section 160. A contravention which is unrectified immediately prior to 1 July 2014 might result in an additional, separate contravention at the start of the following financial year.

- [Good decision-making model](#) (link available internally only) – which requires that our decision be legal, ethical, equitable, overt, sensible, timely, consistent with the principles of natural justice and environmentally sustainable.

Case-specific factors

Generally, an education direction will be an appropriate compliance tool where gaps in a person's trustee knowledge or understanding of those duties and obligations have contributed to the contraventions.⁹

Case-specific factors which are likely to indicate it is not appropriate to give an education direction include:

- the person has previously been given an SMSF education direction
- the person would already be expected to have the necessary skills and knowledge, such as an experienced SMSF adviser
- the person already has a good level of knowledge of their obligations and were aware their conduct would be likely to result in a contravention
- the person has already voluntarily undertaken an education course after the contravention occurred and prior to us considering issuing an education direction
- you determine the circumstances would warrant the person being removed from that position, such as by disqualification.¹⁰

As all trustees and directors of corporate trustees are responsible for ensuring the provisions of the SISA and the SISR are complied with, a person may still 'contravene' one of the provisions even if they:

- do not take an active role in managing the fund
- were not directly involved in the conduct that gave rise to the contravention.

However, the trustee or director's level of involvement in the contravention will still be a relevant factor when deciding whether it is appropriate to give a direction.

Depending on the circumstances of the case, where you identify general principles and case-specific factors which would rule out a decision to give an education direction, you may consider other compliance options.

⁸ See subsection 160(1).

⁹ See section 2 of this Practice Statement.

¹⁰ See section 126A about disqualifying a person.

6. Time to comply with an education direction

The period of time you give to comply with an education direction must be reasonable in the circumstances.¹¹

This will require an understanding of the trustee's particular circumstances.

A period of no less than 28 days to comply with the direction will, in most circumstances, be reasonable. However, if you believe a period of 28 days would not be reasonable in the trustee's circumstances, you should allow a longer period.

7. Varying or revoking an education direction

An education direction may be varied upon request or on your own initiative, however it can only be revoked on your own initiative.¹²

A variation would usually be confined to giving further time to undertake an approved course and provide evidence of completion.

The principles discussed in section 5 of this Practice Statement should be relied upon for all such decisions.

Variation requests

You can vary an education direction where the person given the direction¹³:

- makes a written request before the timeframe allowed for complying with the direction has expired, and
- sets out the reasons for the request.

A request to vary an education direction will extend the time the person has to comply with it.¹⁴ However, if you do not make a decision on the request within 28 days after the request was made, the request is taken to have been refused.¹⁵

If you decide to vary the direction in any way, you must notify the person and give them a copy of the varied direction. Additionally, if you decide to refuse the request, or vary it in a way otherwise than requested, you must give the person written reasons for the decision.¹⁶

On your own initiative

Alternatively, you are able to revoke or vary an education direction on your own initiative. You do so by giving the relevant person a written notice either revoking or varying the terms of the education direction.¹⁷

Although you can revoke or vary an education direction at any time, it would generally not be appropriate to do so merely where the person given the direction failed to comply with it.

8. Applying administrative penalties for failing to comply with an education direction

An administrative penalty of 5 penalty units¹⁸ is imposed for failing to comply with the terms of an education direction.¹⁹ The penalty may be remitted in part or in full.²⁰

In addition, if the person does not comply with the direction by the end of the specified period, the person commits an offence of strict liability which carries a maximum of 10 penalty units.²¹

9. Objecting to our decisions

A person may object to a decision in the manner set out in Part IVC of the *Taxation Administration Act 1953* if they are dissatisfied with our decision to²²:

- give an education direction
- refuse to vary the direction (including a deemed refusal)
- vary the direction but not in accordance with the request.

10. More information

For more information, see:

- Law Administration Practice Statement [PS LA 2023/1 Self-managed superannuation funds – rectification directions for contraventions of the Superannuation Industry \(Supervision\) Act 1993](#)
- Law Administration Practice Statement [PS LA 2020/3 Self-managed superannuation funds – administrative penalties imposed under](#)

¹¹ See subsection 160(3).

¹² See section 163.

¹³ See subsections 164(1) to (3).

¹⁴ See subsection 164(7).

¹⁵ See subsection 164(5).

¹⁶ See subsection 164(6).

¹⁷ See section 163.

¹⁸ The value of a penalty unit is contained in section 4AA of the *Crimes Act 1914* and is indexed regularly. The dollar amount of a penalty unit is available at [Penalties](#).

¹⁹ See subsections 166(1) and 160(4).

²⁰ See subsection 298-20(1) of Schedule 1 to the *Taxation Administration Act 1953*. See Law Administration Practice Statement [PS LA 2020/3 Self-managed superannuation funds – administrative penalties imposed under subsection 166\(1\) of the Superannuation Industry \(Supervision\) Act 1993](#).

²¹ See subsection 160(5).

²² See section 165.

subsection 166(1) of the Superannuation Industry (Supervision) Act 1993

- Law Administration Practice Statement [PS LA 2008/3](#) *Provision of advice and guidance by the ATO*
- Law Administration Practice Statement [PS LA 2006/19](#) *Self-managed superannuation funds – issuing a notice of non-compliance*
- Law Administration Practice Statement [PS LA 2006/18](#) *Self-managed superannuation funds – enforceable undertakings*
- Law Administration Practice Statement [PS LA 2006/17](#) *Self-managed superannuation funds – disqualification of individuals to prohibit them from acting as a trustee of a self-managed superannuation fund.*

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APPENDIX 1 – Examples

Example 1 – education direction given – new fund with minor contraventions

An SMSF has been operating for 2 years.

For the second income year, the approved SMSF auditor reports contraventions of the SISA. The contraventions are relatively minor and involve a small proportion of fund assets. The trustees advise that they have been relying on an adviser to assist them in their role as they find the super laws governing SMSFs complex.

The case officer establishes that the contraventions have been rectified. They apply the general principles and determine there are no case-specific factors present which would rule out a decision to give an education direction. In addition, the case officer determines it is fair and reasonable to give an education direction and the trustees will benefit from improving and refreshing their overall trustee knowledge.

Outcome: in addition to applying an administrative penalty and remitting it in full for the contravention, the case officer gives the trustees an education direction allowing 28 days to undertake an approved course of education to improve their knowledge of the law and their role as trustees of an SMSF.

Example 2 – education direction given – established fund and trustees make a mistake

An SMSF has been operating for 5 years.

For the latest income year, the approved SMSF auditor reports a contravention after the fund invests considerably more than 5% of the fund's assets in in-house assets.

The case officer identifies the trustees do not have any past contraventions and after discussing the matter with them, determines the contravention resulted from a mistake arising from deficient trustee knowledge.

The case officer applies the general principles and determines there are no case-specific factors that would rule out a decision to give an education direction, and that giving one would be fair and reasonable. Further, the trustees will also benefit by correcting trustee knowledge gaps which had contributed to them making the mistake.

Outcome: in addition to applying an administrative penalty for the contravention, the case officer gives the trustees an education direction allowing 28 days to undertake an approved course of education to remedy trustee knowledge gaps.

Example 3 – education direction not given – established fund and trustee already understand obligations

An SMSF has been operating for 6 years. The fund has a complex structure with significant assets.

During the annual audit for each of the past 2 years, the fund's approved auditor reports that a loan and financial assistance was provided to a member of the fund. Although the loan was repaid with interest in the earlier year, the contravention in the latter year remains unrectified. The trustees also concede they knew their conduct would result in a contravention.

The case officer considers if it is appropriate to give the trustees an education direction in order to refresh their overall knowledge. However, the facts show the trustees have a good level of trustee knowledge and skills and knew at the time their conduct would result in a contravention.

Outcome: the case officer rules out giving an education direction as the trustees already have the required level of knowledge. Instead, the case officer considers what other compliance options may be more appropriate.

Example 4 – education direction not given – established fund and trustee removed

An SMSF has been operating for 7 years and has 2 overdue SMSF annual returns.

The fund eventually lodges the returns and, in the process, the approved SMSF auditor also reports several serious contraventions. Among those contraventions, the trustees are found to have paid out a majority of the super benefits in the fund where no condition of release was met.

The case officer identifies the trustees knowingly contravened the law in order to alleviate financial distress they were facing. The case officer also determines the trustees are not fit and proper to be trustees of an SMSF in accordance with PS LA 2006/17.

Outcome: the case officer rules out giving an education direction in this case because the circumstances warrant removal of the trustees from the position. Therefore, the case officer instead proceeds with action to disqualify the trustees of the SMSF.

References

Legislative references	SISA 1993 SISA 1993 Pt 3B SISA 1993 104A SISA 1993 126A SISA 1993 159 SISA 1993 160 SISA 1993 160(1) SISA 1993 160(2) SISA 1993 160(3) SISA 1993 160(4) SISA 1993 160(5) SISA 1993 163 SISA 1993 164(1) SISA 1993 164(2) SISA 1993 164(3) SISA 1993 164(5) SISA 1993 164(6) SISA 1993 164(7) SISA 1993 165 SISA 1993 166(1) SISA 1993 262A SISR 1994 TAA 1953 Part IVC TAA 1953 Sch 1 298-20(1) Crimes Act 1914 4AA
Other references	Explanatory Memorandum to the Tax and Superannuation Laws Amendment (2014 Measures No. 1) Bill 2014 ATO Charter Compliance model Good decision-making model (link available internally only)
Related Practice Statements	PS LA 2023/1 PS LA 2020/3 PS LA 2008/3 PS LA 2006/19 PS LA 2006/18 PS LA 2006/17

ATO references

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