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# Completing the auditor contravention report

Work out how to complete an Auditor/actuary contravention report (NAT 11239) including reporting criteria and examples.

**Last updated** 11 March 2025

## Lodge your auditor contravention report

Lodge your auditor contravention reports electronically using Online services for business.

## Reporting contraventions

Apply reporting criteria to work out the contraventions of the SISA and SISR that need to be reported.

## Reporting criteria

These tests set out what contraventions you must report.

## How to complete the ACR form

Guidance notes on how to complete the questions found in the form.

## Addendum for financial years impacted by COVID-19



Financial impacts of COVID-19 on SMSF trustees.

## More information



Guidance notes to help complete the Auditor actuary contravention report.

QC 17603

# Lodge your auditor contravention report

Lodge your auditor contravention reports electronically using Online services for business.

**Last updated** 7 March 2025

## Lodging online

To lodge your auditor contravention reports (ACRs) electronically, you need to use **Online services for business**. eSAT was decommissioned on 1 March 2022.

Online services for business is a secure way of managing your tax and super obligations which can be used on multiple devices.

Online services for business has a number of features which can make it easier and quicker for you to lodge ACRs, including:

- the ability to prepare and save multiple ACRs before lodging
- pre-lodgment Australian business number (ABN) validation and name checks to ensure fund details match Super Fund Lookup information

- the ability to add and store SMSF auditor details to populate when preparing ACRs and audit complete advices (ACAs)

To lodge via Online services for business:

1. Select the **Lodgments** menu, then **Reports and forms**.
2. Select **Audit Contravention Report** from the list of reports and forms.
3. Complete the required fields (print a draft copy of the ACR by selecting the **Print friendly version** button before submitting).
4. Check the declaration and select **Submit**.

When the form is submitted successfully, a receipt number will be displayed, and you can choose to print or save a copy of the submitted form.

**Note:** You won't be able to access a copy of the form after leaving this page.

You can also use Online services for business to lodge an ACA.

See more about [lodging ACRs and ACAs in Online services for business](#).

Online services for business is the preferred channel for lodging ACRs and ACAs and for communicating with us via secure mail. Alternatively, you can order a paper version of the *Auditor/actuary contravention report* (NAT 11239) form. This form can't be downloaded.

Actuaries can't lodge via Online services for business, however they can inform us of contraventions via the paper form ACR or in writing.

Paper form ACRs should be sent to:

**AUSTRALIAN TAXATION OFFICE**  
**PO BOX 3333**  
**PENRITH NSW 2740**

## Who should use these instructions?

You should use these instructions if you:

- are an approved SMSF auditor or actuary for an SMSF

- have contraventions and other important matters to report on your ACR.

**Note:** If there are no contraventions or other information to report, you can use Online services for business to lodge an ACA. You shouldn't lodge an ACR if there are no contraventions or issues of concern to report.

For a printed version of this information, use the print icon in the top right corner. You can print a single page or the entire document.

## Before completing your report

Before you complete and submit your ACR, make sure you understand all your responsibilities. This includes additional responsibilities outlined in the **Addendum for financial years impacted by COVID-19**, which applies for the 2019–20, 2020–21 and 2021–22 financial years.

The ACR is an approved form for the purposes of the *Superannuation Industry (Supervision) Act 1993* (SISA). As a result, you must use the ACR to report contraventions of the SISA and the *Superannuation Industry (Supervision) Regulations 1994* (SISR).

Penalties may be imposed for giving false or misleading statements.

QC 17603

## Reporting contraventions

Apply reporting criteria to work out the contraventions of the SISA and SISR that need to be reported.

**Last updated** 11 March 2025

## Apply reporting criteria

As an approved SMSF auditor or actuary, you must apply reporting criteria to work out the contraventions of the SISA and SISR that need

to be reported in the approved form. You may also report other important information using this form.

## **Reporting contraventions resulting from events**

You must report contraventions and other matters resulting from an event. An 'event' is an action or inaction by the trustees that may lead, or has led, to one or more contraventions.

When you prepare this report, describe the event and choose the relevant provisions from the list of reportable sections and regulations of the SISA and SISR that have been breached by the trustees. You can use the ACR to report contraventions for multiple events.

## **When to report contraventions**

You must lodge a report within 28 days of completing the audit if, in the normal course of conducting the audit, you form the opinion that a contravention of the SISA or SISR may have occurred, may be occurring or may occur either:

- during the financial year being audited
- before or after the financial year being audited.

The contravention must meet the reporting criteria.

## **Reporting contraventions where an audit engagement is terminated**

Where you identify a contravention while doing an audit, but the engagement is terminated before the audit is finalised, you still have an obligation to report a contravention to both the trustee and to us if it meets the reporting criteria.

Reporting obligations exist from the time you are appointed by the SMSF trustees to do the annual audit of the fund's operations. They don't cease because an audit engagement is terminated early. This applies provided your opinion is formed during, or in connection with, performing your audit functions and regardless of whether the engagement is terminated by the trustees or the auditor.

When lodging the ACR you may also want to provide any additional concerns in Section G of the form. For example, if your services have been terminated because you identified a reportable contravention.

QC 17603

## Reporting criteria

These tests set out what contraventions you must report.

**Last updated** 11 March 2025

### Contraventions to report

Work through each test and, where applicable, report the sections and regulations listed in tables 1A and 1B. For the 2019–20, 2020–21 and 2021–22 financial years, you also need to consider instructions in the **Addendum for financial years impacted by COVID-19**. These instructions relate to rental, loan repayment and in-house asset relief, market valuations and early release of super due to COVID-19.

You must always comply with prescribed auditing and assurance standards.

You must report contraventions that meet the reporting criteria. You can also report contraventions that **do not** meet the reporting criteria if, in your [professional judgment](#), the regulator should be aware of the contravention.

### Test 1: Fund definition test

Where the fund fails to meet the definition of an SMSF under section 17A of the SISA, you can report this event in Section E.

Failing to meet the definition of an SMSF can result in a contravention of the SISA which may result in the fund losing its complying status. You should report this to us because, as the regulator of these funds, we may be able to assist the trustees in avoiding serious consequences if they want their fund to remain a complying SMSF.

Where you identify a contravention of section 126K of the SISA (disqualified persons not to be trustees or directors of corporate trustees), report this event in Section E.

You need to report this to us as contraventions of section 126K are serious. The removal of a trustee or director of a corporate trustee to rectify the contravention may impact on whether a fund meets the definition of an SMSF under section 17A of the SISA.

Go on to **test 2**.

## **Test 2: New fund test**

As at the end of the financial year, if the SMSF is less than 15 months old and there are contraventions, you need to identify if any single contravention has exceeded \$2,000. If this is the case, you report **all** contraventions of the sections and regulations listed in tables 1A and 1B, regardless of the financial thresholds. You apply no further tests.

If this is not the case, go to **test 3**.

The 15 months is measured from the establishment date of the fund. A fund is generally established on the date it first holds any assets.

## **Test 3: Trustee behaviour test**

You must report a contravention of a section or regulation listed in tables 1A and 1B where the trustees have previously received advice of a contravention and after receiving this advice, they breached the same section or regulation, even if it doesn't meet the reporting threshold test. For example, you may establish that the trustees received advice of a contravention previously from reviewing the fund's prior year working papers.

Go to **test 4**.

## **Test 4: Trustee behaviour test**

You must report a contravention of a section or regulation listed in tables 1A and 1B where an identified contravention from a previous financial year hasn't been rectified at the time of the current audit.

Go to **test 5**.

## Test 5: Trustee behaviour test

Statutory time period refers to periods prescribed in the SISA and SISR.

The reportable sections and regulations that have a statutory time period are listed in tables 1A and 1B.

If the trustees fail to meet a statutory time period by more than 14 days, then these contraventions are reported as per the sections and regulations listed in tables 1A and 1B.

Go to test 6.

## Test 6: Financial threshold test

Where the value of all contraventions is more than 5% of the value of the fund's total assets, identified contraventions are reported as per the sections and regulations in tables 1A and 1B.

Any additional information needs to be reported in accordance with auditing and assurance standards and your professional judgment.

If this doesn't apply, go to test 7.

### Example: financial threshold test

An SMSF has \$250,000 in total assets, including an asset acquired through a related party for \$25,000. This acquisition contravened section 66 because the asset wasn't one of the exceptions from the general prohibition on acquiring assets from a related party.

The value of the contravention is 10% of the value of the fund's total assets. The contravention must be reported because it is greater than 5% of the fund's total assets.

In relation to test 6, if section 83 in-house assets (prohibition on further acquisition) is contravened, then the contravention value is the amount over the statutory 5% limit.

For example, if the market value ratio of a fund's in-house assets is 7%, then the contravention value is 2% of the fund's assets (7% minus 5%).

limit). The contravention value is not greater than 5% of the value of the fund's total assets.

## **Test 7: Financial threshold test**

If the value of all contraventions of a section or regulation listed in tables 1A and 1B is more than \$30,000, all identified contraventions are reported.

Any additional information needs to be reported in accordance with the auditing and assurance standards and your professional judgment.

## **Professional judgment**

In some situations, a contravention may have occurred in the fund, but you might be unable to determine the value of the contravention.

For example, you may not have sufficient appropriate audit evidence to determine whether the assets of the fund have been valued at market value. This means a regulation 8.02B contravention may have occurred.

In this case you may use your professional judgment to determine whether you think the value of the contravention could meet the financial threshold tests and where appropriate, report an event at Section E of the form. If you are unsure whether this would constitute a reportable contravention, you can provide this information at Section G.

A specific scenario where you may use your professional judgment in deciding whether to lodge an ACR, is in relation to market value contraventions for assets held by service organisations. ASA 402 is relevant in determining the audit procedures required for this type of asset [Regulation 8.02B of the Super Industry (Supervision) Regulations 1994].

If after performing the audit procedures you conclude that the risk of a Regulation 8.02B contravention is low, but you are unable to obtain sufficient appropriate audit evidence in accordance with ASA 402, you may use your professional judgment to determine if an ACR is required.

The risk may be considered low if the modification of Part B of the IAR is solely by virtue of a modification of Part A, due to the inability to obtain sufficient appropriate audit evidence over the rights and

obligations assertion of investments managed by a service organisation, leading to the inability to ensure the assets have been reported at market value.

If you have qualified Part B of the IAR for a Regulation 8.02B contravention that otherwise meets the reporting criteria and do not lodge an ACR, your audit file should clearly explain the procedures performed and evidence relied on to conclude the risk of a contravention is low.

We also encourage you to report contraventions and other information that you think will help us perform our function as the regulator of SMSFs at Section G of the form. To decide if you should report contraventions and other important facts, even if they don't meet any of the tests, apply both:

- the auditing and assurance standards
- your professional judgment.

Before you complete this section, consider if you consent (under paragraph 14ZZW(2)(e) of the *Taxation Administration Act 1953* for the purposes of the tax whistleblower legislation), to disclosing to the Commissioner of Taxation your identity (if required) when using this information in administering any taxation laws.

To keep your identity confidential, make a disclosure by completing the tip-off form. Alternatively, find the form in the **Contact us** section of the ATO app or phone in your tip-off on **1800 060 062**.

QC 17603

## How to complete the ACR form

Guidance notes on how to complete the questions found in the form.

Last updated 19 January 2026

## Instructions

The following instructions explain how to complete the ACR questions found in the ACR form.

Mandatory questions are indicated with an \*.

Questions asking for information about an event must be answered for every event that you report.

For more information about lodging ACRs and ACAs online, see [Approved SMSF auditors in Online services for business](#).

## **Section A: Report information**

### **\*Question 1**

**This report applies to the financial year ending 30 June.**

Provide the financial year of the audit that the report applies to.

Each report relates to the specified financial year only. If you are conducting audits of more than one financial year, report the contraventions you identify during the audit of each financial year in a separate report.

### **\*Question 2**

**This report is new or revised.**

Place an X in **one** applicable box only.

A report is either:

- new – if it is the first time you are lodging a report for the events
- revised – if it is lodged to correct or change information previously reported on a new report or earlier revised report.

To revise a previously lodged report, you must re-report all the information (not just the items you want to revise).

The revised report replaces the previous report.

## **Section B: Fund information**

### **\*Question 3**

**Name of self-managed superannuation fund (SMSF).**

Provide the full name of the SMSF as it appears on the fund's trust deed.

#### **\*Question 4**

##### **Australian business number (ABN) and/or tax file number (TFN).**

Provide the SMSF's ABN and/or TFN. You must also provide these details at the top of page 3 on the form.

We are authorised by the *Taxation Administration Act 1953* to request the provision of TFNs. We will use the TFN to identify the entity in our records. It is not an offence not to provide the TFN.

Taxation law authorises us to collect information and disclose it to other government agencies.

This question must be answered with either the TFN or the ABN of the SMSF.

#### **\*Question 5**

##### **What was the value of the fund's total assets at the end of the year of audit?**

Provide the value of the SMSF's total assets as shown in their financial statements at the end of the financial year of audit.

Use whole dollars only.

### **Section C: Audit firm information**

#### **\*Question 6**

##### **Auditing firm details.**

Provide:

- the name and ABN of the firm you work for
- your own ABN if you are a sole practitioner.

### **Section D: Auditor information**

#### **\*Question 7**

### **Auditor's details.**

Provide your details as the auditor or actuary lodging the ACR.

For your phone number, print the 10-digit phone number, including the area code, and leave no spaces.

Make sure the address you provide is the most appropriate address to receive mail from us.

You must report your name, at least one contact number and your postal address.

## **Section E: Contraventions**

Questions marked with an \* are mandatory for each event that is reported except where otherwise stated (refer to Questions 12, 15 and 17).

A contravention is either an:

- action prohibited under the SISA and SISR
- inaction that results in the trustee not meeting their obligations under the SISA and SISR.

Only contraventions of the sections and regulations listed in tables [1A](#) and [1B](#) should be reported here.

If you are concerned about a contravention or continued contravention of a section or regulation that is **not** listed in tables 1A and 1B, you may report that information at Section G.

An event is something that may lead, or has led, to one or more contraventions. If an event leads to a contravention of more than one section or regulation, you should list each contravention that relates to the event.

Don't report unrelated contraventions as a single event.

### **Example: an event leading to contravention of more than one section**

An SMSF borrows money that is used to purchase a home from a member (the loan is not a limited recourse borrowing arrangement and the home is not business real property).

This event results in several contraventions of the SISA, including section 66 (acquisition of assets) and section 67 (borrowing). The auditor reports this as one event and lists each contravention on the form for that event.

We rely on complete reporting from SMSF auditors to understand fund compliance year to year. Complete reporting requires auditors to report contraventions in the year they occur and in all following years that the contravention remains unrectified. This includes where the auditor is aware that we have advised the trustees that we would take no further action, at that time, in relation to the contravention.

While no further action may be appropriate in one year, if we receive information that a contravention remains unrectified in following years, we may choose to take a different compliance approach with that fund.

### **Example: an existing contravention that was previously reported and can be rectified, but has not been**

Roger is an SMSF auditor engaged to audit the McAlister SMSF. The McAlister SMSF has a single member and a corporate trustee, McAlister SMSF Pty Ltd. The company also operates a separate business.

Roger identifies during the 2020–21 financial year audit that the bank account used by the fund is recorded as held in the name of the company, but not 'as trustee for' the fund. However, it has also been used for some business transactions.

Based on the evidence, Roger decides there is a contravention of regulation 4.09A of the *Superannuation Industry (Supervision) Regulations 1994*. The fact that the bank account is not recorded in the name of the company 'as trustee for' the fund doesn't itself mean there is a contravention. However, the corporate trustee is not keeping its assets separate to, and distinguishable from, the assets held by the company in its non-trustee company.

Roger reports the contravention to the ATO in an ACR, and to the corporate trustee in the SMSF Independent Auditor's Report. He

advises the trustee to take steps to correct the separation of assets contravention by:

- arranging with the bank to have the name of the account changed to McAlister SMSF Pty Ltd as trustee for the McAlister SMSF, and
- ensuring the fund's bank account is used solely for the purposes of the SMSF.

During the 2021–22 financial year audit, Roger identifies that the fund trustee has not made any arrangements to correct the issue. The company continued to use the fund's bank account for some of its business transactions. This is a continuing contravention that has previously been reported, but can be rectified, so Roger is required to report the contravention again for the 2021–22 year.

We accept that some contraventions only occur at a point in time and don't continue in future years. You should report these contraventions in the year they occur (or when you first become aware of them) but not in subsequent years. Examples of contraventions that should be reported in the year they occur and not in subsequent years (unless repeated) include contraventions of sections 66, 103 and 104A of the SISA.

Section 103 and section 66 contraventions are unable to be rectified, so these should always be reported as unrectified.

#### **Reporting section 104A contraventions – trustee declarations:**

- If an auditor has no evidence that an existing or new trustee client signed a trustee declaration within 21 days of appointment, the auditor should lodge an ACR reporting an unrectified section 104A contravention unless they are aware that one has already been lodged for that contravention.
- If the trustee signs a new trustee declaration before the auditor lodges the ACR, the auditor can report the section 104A contravention as one that is rectified.
- If the auditor has previously verified evidence that a trustee declaration was signed by the trustee within 21 days of appointment, but the trustee is unable to provide a copy to the auditor for their audit file for the current audit year, the auditor

should get the trustee to sign a new one. The new declaration can act as a valid replacement for the previous one such that an ACR is not required.

**You should report all the following in the current financial year:**

- contraventions from previous financial years that can be rectified but have not been
- contraventions that have recurred
- contraventions that have otherwise not been reported previously.

**Example: an existing contravention that was previously reported but can't be rectified**

Gillian is the SMSF auditor for the Smith SMSF. In the 2019–20 financial year audit, Gillian identified that minutes of trustee meetings hadn't been kept. Gillian reported the section 103 contravention in the 2019–20 ACR. Since then, the trustees have retained all minutes of meetings.

Gillian is auditing the 2020–21 year. She knows there is a contravention of section 103 because, even though the trustees kept the minutes of meetings for 2020–21, they have not retained minutes of meetings for the last 10 years.

Because this contravention can't be rectified and it was previously reported in the 2019–20 ACR, it doesn't have to be reported again.

**\*Question 8**

**Did the event commence before the audit period?**

Place an X in the applicable box.

**\*Question 9**

**Start date of event.**

Provide the date the event started.

This may be in an earlier financial year than the one being audited. If the event started in an earlier financial year and you are unable to

identify the start date, leave this blank.

### **Example: start date of event**

An SMSF borrowed money in an earlier financial year and the money hasn't been paid back, so the breach has not been rectified by the trustees. The auditor provides the date in the earlier financial year that the fund borrowed money.

### **\*Question 10**

**Describe the event, including any mitigating factors.**

Provide details of the event, including any mitigating information that may help us work out what compliance action we should take.

You can report up to 6 separate events on one ACR.

### **\*Question 11**

**Have all the contraventions been fully rectified or do the trustees have a plan to fully rectify all of them?**

Place an X in the applicable box.

### **\*Question 12**

**What is the estimated completion date, or if fully rectified, when was this completed?**

Provide the final date the contraventions were fully rectified or the estimated rectification date.

This question must be answered for every event that you report where it applies. Leave this blank if you can't estimate a date. For example, where there is no plan to rectify the contravention.

### **\*Question 13**

**Describe any steps taken to rectify the contraventions or any planned steps to rectify the contraventions.**

Provide details of the steps taken to rectify the contravention and any planned action to rectify the contravention. Include details of when it is expected the contraventions will be rectified.

## \*Question 14

### What sections/regulations have been, or may be, contravened?

Provide the sections or regulations for the event. Copy each one exactly as it appears in tables [1A](#) and [1B](#).

For each event, you must enter at least one section or regulation – don't repeat the same section or regulation for any one event.

Where the event results in, or may result in, more than one contravention, list each section or regulation on a separate line and complete the information required for questions 14 to 17.

Contraventions of sections and regulations not listed in tables 1A and 1B may be reported at Section G.

**Table 1A: List of reportable sections**

<b>Section</b>	<b>Section title</b>	<b>Does a statutory time period apply?</b>
<b>S17A</b>	SMSF definition	No
<b>S35C(2)</b>	Trustee to provide documents to the auditor	Yes. Trustees must ensure that requested relevant documents are given to the auditor within 14 days of the request being made.
<b>S62</b>	Sole purpose test	No
<b>S65</b>	Lending or providing financial assistance to members or their relatives	No
<b>S66</b>	Acquisition of assets from related parties	No
<b>S67</b>	Borrowing by the fund	Yes. For borrowing exceptions only. A temporary borrowing to pay beneficiaries or to make a super surcharge

		<p>payment must not exceed 90 days.</p> <p>A temporary borrowing to cover settlement of securities transactions must not exceed 7 days.</p>
<b>S82</b>	In-house assets – exceeding in-house assets ratio	Yes. Market value ratio for the 2000–01 year of income and later years of income. If it exceeds 5%, the trustee must prepare and carry out a written plan to reduce the market value ratio to 5% or less before the end of the following year of income.
<b>S83</b>	In-house assets – prohibition on further acquisition	No
<b>S84</b>	In-house asset rules must be complied with	No
<b>S85</b>	In-house assets – prohibition of avoidance schemes	No
<b>S103</b>	Minutes and records	Yes. Trustees must retain minutes of all meetings and records of all decisions made for at least 10 years.
<b>S104A</b>	Trustee declaration	Yes. A trustee declaration in the approved form must be signed within 21 days of becoming a trustee (or a director of a corporate trustee) of an SMSF.
<b>S109</b>	Investments to be maintained on an arm’s length basis	No

<b>S126K</b>	Disqualified persons not to be trustees	Yes. Trustees must immediately tell us in writing if a trustee is or becomes a disqualified person.
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**Table 1B: List of reportable regulations**

<b>Regulation</b>	<b>Regulation title</b>	<b>Does a statutory time period apply?</b>
<b>R4.09</b>	Investment strategy	No
<b>R4.09A</b>	Separation of assets	No
<b>R5.08</b>	Minimum benefits	No
<b>R6.17</b>	Restriction on payment of benefits	No
<b>R7.04</b>	Acceptance of contributions	Yes. Returning contributions to members within 30 days – for example, where no TFN is quoted.
<b>R8.02B (Assets to be valued at market value for the 2012–13 and later income years)</b>	Valuation of assets	No
<b>R13.14</b>	Charges over assets of the fund	No

<p><b>R13.18AA (From 1 July 2016, all investments in collectables and personal use assets must comply with these rules, regardless of when they were acquired.)</b></p>	<p>Investment in collectables and personal use assets</p>	<p>Yes. Collectables and personal-use assets need to be insured within 7 days of the date of acquisition by the SMSF.</p>
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## \*Question 15

### What is the maximum value of the contravention?

Provide the maximum dollar amount of the contravention. Use whole dollars only.

This question should only be left blank for contraventions of section 17A, subsection 35C(2), section 62, section 85, section 103, section 104A, section 126K and regulation 4.09. You must answer this question for all contraventions of other sections and regulations.

There will be a contravention of regulation 8.02B of the SISR where no evidence or insufficient appropriate evidence is provided to support the market value of assets listed in the fund's financial statements (for example, unlisted shares or units).

You must use your professional judgment to determine whether the contravention is reportable because it meets the financial threshold tests.

If you're unsure whether this would constitute a reportable contravention, you may provide information about the issue at Section G of the form. Otherwise, you should report the contravention as an event at Section E and record the maximum value of the contravention as the value of the asset listed in the financial statements.

You should also provide details in the event description field describing the nature of the asset, and why the market value can't be determined.

**Example: maximum value of the contravention**

A fund contravenes section 65 by lending money to a member of the fund. The auditor reports the highest value of the loan (including unpaid interest) that was outstanding at any time during the year.

### **\*Question 16**

#### **Has the contravention been fully rectified?**

Place an X in the applicable box.

Answer 'Yes' only if you have confirmed the contravention has been fully rectified.

Answer 'No' if the contravention has not been fully rectified, even if it is in the process of being rectified.

#### **Example: reporting rectified contraventions**

Mia is the auditor for the Connolly SMSF. She identified that during the 2018–19 financial year, the Connolly SMSF had loaned money to a member. At the time Mia conducted the audit, the loan had been repaid in full with interest.

As the contravention met a reporting test, Mia reports the loan in a 2018–19 ACR as fully rectified.

### **\*Question 17**

#### **What is the outstanding value to be rectified (last known)?**

Provide the outstanding value to be rectified if you have answered 'No' to question 16. Use whole dollars only.

This question should only be left blank for contraventions of section 17A, subsection 35C(2), section 62, section 85, section 103, section 104A, section 126K and regulation 4.09. You must answer this question for all contraventions of other sections and regulations.

#### **Example: outstanding value to be rectified**

A fund lent \$200,000 to a fund member; the member repaid \$150,000, plus interest. The auditor reports that the outstanding value to be rectified is \$50,000, plus any unpaid interest.

### **Example: applying the reporting tests**

Leon established an SMSF in 2019.

Sian audits Leon's SMSF for the 2021–22 financial year in November 2022 and identifies the following.

On 16 June 2022, Leon borrowed \$10,000 from his SMSF's bank account to pay his personal expenses. Leon thought it was allowable because the fund wasn't using the money and he drafted a loan agreement. He gave no thought to paying interest for the loan.

The fund has \$420,000 in assets. It has a rental unit \$300,000, unlisted shares in an unrelated private company \$100,000, cash \$10,000 and a loan of \$10,000.

Sian identifies the following contraventions:

- a loan of \$10,000, contravening section 65 – lending or providing financial assistance to members or their relatives
- financial assistance of \$458 (calculated using reasonable market rates from the date the money is taken out until 30 June) for failing to account for interest, contravening section 65 – lending or providing financial assistance to members or their relatives
- the investment is not at arm's length because interest wasn't considered for the loan, contravening section 109 – investments to be maintained on an arm's-length basis.

Sian tells Leon of the issues and explains the contraventions must be rectified by repaying the \$10,000, plus interest. Leon assures Sian he will do this by the end of December 2022. This is the first time Leon has contravened the SISA and SISR.

Sian uses the following tests to decide whether she should report the contravention.

**Test 1 – Did the fund fail to meet the definition of an SMSF?**

No.

**Test 2 – As at the end of the financial year, is the SMSF less than 15 months old and did the value of any single contravention of a section or regulation listed in tables 1A or 1B exceed \$2,000?**

No. Leon established his SMSF in 2019, so it is older than 15 months.

**Test 3 – Have the trustees previously received advice of a contravention that they have breached again?**

No.

**Test 4 – Is there an identified contravention from a previous year that has not been rectified at the time this audit is being conducted?**

No.

**Test 5 – Did the trustees fail to meet a statutory time period by more than 14 days?**

Not applicable – there is no specified time period for these contraventions.

**Test 6 – Was the total value of all contraventions greater than 5% of the value of the fund's total assets?**

The contravention value is calculated as follows.

**Table 1: Calculation of contravention value**

<b>Section</b>	<b>Value</b>
Section 65 – \$10,000 loan, plus interest amount \$458	\$10,458
Section 109 – interest	\$458
Maximum value of all contraventions	\$10,916

The percentage value of the contraventions is  
 $\$10,916 \div \$420,000 = 2.59\%$  (less than 5% threshold).

In this example, there was only one event. If there was more than one event, you add the values of each event to give the total percentage of the contraventions.

**Test 7 – Was the total value of all contraventions greater than \$30,000?**

The contravention total value is \$10,916, which is less than \$30,000.

In this example there was only one event. If there was more than one event, you add the values of each event to calculate the total value of the contraventions.

As none of the reporting criteria were met, Sian is not required to report this contravention. She applies the Auditing and assurance standards and her professional judgment and decides not to report the contravention because Leon has assured her the contravention will be rectified by the end of December 2022.

However, she qualifies the Independent auditor's report and details the contraventions and the required rectification actions in the management letter she provides to Leon at the completion of the audit.

**Example: completing Section E of the report**

During the next audit, for the 2022–23 financial year, Sian finds that Leon has not repaid the \$10,000. Interest is calculated at \$1,458 (calculated using reasonable market rates from the date the money is taken out until 30 June or date of repayment). She doesn't identify any other contraventions.

Sian applies the tests to decide whether she should report the contravention.

**Test 1 – Did the fund fail to meet the definition of an SMSF?**

No.

**Test 2 – As at the end of the financial year, is the SMSF less than 15 months old and did the value of any single contravention of a section or regulation listed in tables 1A or 1B exceed \$2,000?**

No. Leon established his SMSF in 2019, so it is older than 15 months.

**Test 3 – Have the trustees previously received advice of a contravention that they have breached again?**

No. Sian did not identify any repeated contraventions previously advised to the trustees.

**Test 4 – Is there an identified contravention from a previous year that has not been rectified at the time this audit is being conducted?**

Yes. Leon had been advised of the breach by the auditor in the previous year and had not taken any steps to repay the loan.

- Leon failed to repay the \$10,000 he borrowed during the previous year, contravening section 65 – lending or providing financial assistance to members.
- Leon failed to pay interest on the borrowing, contravening section 65 – lending or providing financial assistance to members.
- Leon failed to take steps to recover the outstanding interest on the borrowing, contravening section 109 – investments to be maintained on an arm's-length basis.

Each of these contraventions must be reported.

Because all the contraventions identified meet reporting test 4, Sian must report all the contraventions. (As Sian didn't identify any further contraventions, she doesn't need to apply the remaining tests.)

Sian completes Section E of the contravention report for the 2022–23 year by including text as follows.

### **Event one**

**Question 8: Did the event commence before the audit period?**

Place an X in the Yes box.

**Question 9: Start date of event.** Enter 16/06/2022

**Question 10: Describe the event, including any mitigating factors.** Add text 'Leon borrowed \$10,000 from the fund bank account to pay his sole trading business creditors. Trustee/s have not rectified this contravention from the previous year where this was identified and communicated to the fund.'

**Question 11: Have all the contraventions been fully rectified or do the trustees have a plan to fully rectify all of them?** Place an X in the **No** box.

**Question 12: What is the estimated completion date, or if fully rectified, when was this completed?** Leave this blank.

**Question 13: Describe any steps taken to rectify the contraventions or any planned steps to rectify the contraventions.** Add text 'None'.

**Question 14: What sections/regulations have been, or may be, contravened?** Enter s65 on the first line and s109 on the second line.

**Question 15: What is the maximum value of the contravention?** Enter 11,458 on the first line and 1,458 on the second line.

**Question 16: Has the contravention been fully rectified?** Place an X in the **No** box, on the first 2 lines.

**Question 17: What is the outstanding value to be rectified (last known)?** Enter 11,458 on the first line and 1,458 on the second line.

### **Example: completing Section E of the report for multiple events**

During the 2023–24 financial year audit conducted at the end of November, Sian finds:

- Leon had repaid the \$10,000 plus interest as previously agreed
- on 27 January 2024, Leon borrowed \$5,000 from the fund to pay a personal expense, again with the intention to repay the money to the fund

- Leon used a residential unit the fund owned for 3 weeks over the Christmas period (25 December 2023–14 January 2024) and paid a commercial rental amount to the fund in advance
- the fund has \$520,000 in assets (rental unit \$400,000, unlisted shares in an unrelated private company \$100,000, cash \$15,000, loan \$5,000).

Sian had also made a written request on 16 September 2024 for some bank statements and evidence of the value of the unlisted shares. Leon took 2 months to provide the bank statements and has not provided any evidence to support the market value of the shares.

Sian identifies the following contraventions.

- A loan of \$5,000, contravening section 65 – lending or providing financial assistance to members or their relatives.
- Financial assistance of \$416 (calculated using reasonable market rates from the date the money is taken out until 30 June) for failing to account for interest, contravening section 65 – lending or providing financial assistance to members or their relatives.
- The investment is not at arm's length because interest was not considered for the loan, contravening section 109 – investments to be maintained on an arm's length basis.
- Use of the rental unit causes it to become an in-house asset, taking the in-house asset ratio above 5%, contravening section 83 – in-house asset – prohibition on further acquisition.
- Trustee failed to take reasonable steps to ensure the in-house asset provisions were complied with, contravening section 84 – in-house assets – reasonable steps.
- Failing to provide requested bank statement and evidence of the value of the unlisted shares within 14 days, contravening subsection 35C(2) – trustee to provide documents to the auditor.
- The unlisted shares in the unrelated private company of \$100,000 are listed in the financial statements at cost – the

value of the unlisted shares could not be verified as being reported at market value contravening regulation 8.02B.

Sian tells Leon of the contraventions and explains that he must repay the \$5,000, plus interest. Leon immediately repays \$2,000 and the outstanding interest (calculated using reasonable market rates) but requires more time to repay the remaining amount. Leon decides to sell a business asset to obtain funds to repay the remaining \$3,000. Settlement is due to take place in mid-January 2025. Sian calculates the interest for this period.

Sian can't determine the value of the contravention relating to the unlisted shares but in her professional judgment, thinks the understatement for this event could be greater than 5% of the value of the fund's total assets and greater than \$30,000.

Sian uses the following tests to decide whether she should report the contraventions.

**Test 1 – Did the fund fail to meet the definition of an SMSF?**

No.

**Test 2 – As at the end of the financial year, is the SMSF less than 15 months old and did the value of any single contravention of a section or regulation listed in tables 1A or 1B exceed \$2,000?**

No. Leon established his SMSF in 2019, so it is older than 15 months.

**Test 3 – Have the trustees previously received advice of a contravention that they have breached again?**

Yes. The same contravention occurred in the previous 2 years and the auditor advised Leon.

This must be reported.

Failing to account for interest (section 65 – financial assistance):

- The same contravention occurred in the previous 2 years.
- The contravention value to be reported is \$5,453 (loan of \$5,000 plus interest paid \$416 plus interest payable \$37).

Failing to account for interest (section 109 – non-arm's length):

- The same contravention occurred in the previous 2 years.

- The contravention value to be reported is \$453 (interest paid \$416 plus interest payable \$37).

**Test 4 – Is there an identified contravention from a previous year that has not been rectified at the time this audit is being conducted?**

No.

**Test 5 – Did the trustees fail to meet a statutory time period by more than 14 days?**

Yes. Failure to provide documents – subsection 35C(2) – trustee to provide documents to the auditor.

**Test 6 – Was the total value of all contraventions greater than 5% of the value of the fund’s total assets?**

Yes. Use of rental unit causes it to become an in-house asset, contravening section 83 in-house assets – prohibition on further acquisition.

- The market value of the rental unit is \$400,000.
- The in-house ratio is calculated at 76.92% ( $\$400,000 \div \$520,000$ ) which is over the statutory 5% limit.
- The allowable in-house assets amount is \$26,000 ( $5\% \times \$520,000$ ).
- The maximum value of the contravention is \$374,000 ( $\$400,000 - \$26,000$ ).

The total value of all contraventions is calculated as follows.

**Table 2: Total value of all contraventions**

<b>Section</b>	<b>Value</b>
Section 65 – lending or providing financial assistance to members	\$5,453
Section 109 – investments to be maintained at an arm’s length basis	\$453
Section 83 – in-house assets – prohibition on	\$374,000

further acquisition	
Section 84 – in-house assets – reasonable steps	\$374,000
Regulation 8.02B – asset must be valued at market value	\$100,000
Total value of all contraventions	\$853,906

As the total value of all contraventions is greater than 5% of the value of the fund's total assets ( $\$853,906 \div \$520,000 = 164.21\%$ ) all identified contraventions must be reported – Sian doesn't need to apply test 7.

The value of the unlisted shares cannot be verified and so the maximum value of the contravention must be reported on the form as \$100,000. As the total value of the contravention is greater than 5% of the value of the fund's total assets of \$520,000, the identified contravention must be reported – Sian doesn't need to apply test 7.

Sian completes Section E of the contravention report for the 2023–24 year by including text as follows:

### Event one

**Question 8: Did the event commence before the audit period?**

Place an X in the **No** box.

**Question 9: Start date of event.** Enter 27/01/2024.

**Question 10: Describe the event, including any mitigating factors.** Add text 'Leon borrowed \$5,000 from the fund bank account to pay his sole trading business creditors. He has previously been advised that this is not allowed.'

**Question 11: Have all the contraventions been fully rectified or do the trustees have a plan to fully rectify all of them?** Place an X in the **Yes** box.

**Question 12: What is the estimated completion date, or if fully rectified, when was this completed?** Enter 15/01/2025.

**Question 13: Describe any steps taken to rectify the contraventions or any planned steps to rectify the contraventions.** Add text 'Leon has repaid \$2,000 plus interest

to the fund. He is selling one of his business assets to provide the money to repay the remainder including interest.'

**Question 14: What sections/regulations have been, or may be, contravened?** Enter s65 on the first line and s109 on the second line.

**Question 15: What is the maximum value of the contravention?** Enter 5,453 on the first line and 453 on the second line.

**Question 16: Has the contravention been fully rectified?** Place an X in the **No** box, on the first 2 lines.

**Question 17: What is the outstanding value to be rectified (last known)?** Enter 3,037 on the first line and 37 on the second line.

## Event 2

**Question 8: Did the event commence before the audit period?** Place an X in the **No** box.

**Question 9: Start date of event.** Enter 25/12/2023.

**Question 10: Describe the event, including any mitigating factors.** Add text 'Leon used the fund's rental unit over Christmas. Leon paid rent commensurate with rents in the resort for units which are under management. Leon is now aware this use is not allowed and has sub-let the unit to the resort management company.'

**Question 11: Have all the contraventions been fully rectified or do the trustees have a plan to fully rectify all of them?** Place an X in the **Yes** box.

**Question 12: What is the estimated completion date, or if fully rectified, when was this completed?** Enter 14/01/2024.

**Question 13: Describe any steps taken to rectify the contraventions or any planned steps to rectify the contraventions.** Add text 'Leon used the property for 3 weeks and had vacated 14 January.'

**Question 14: What sections/regulations have been, or may be, contravened?** Enter s83 on the first line and s84 on the second line.

**Question 15: What is the maximum value of the contravention?** Enter 374,000 on the first 2 lines.

**Question 16: Has the contravention been fully rectified?** Place an X in the **Yes** box, on the first 2 lines.

**Question 17: What is the outstanding value to be rectified (last known)?** Leave this blank.

### Event 3

**Question 8: Did the event commence before the audit period?** Place an X in the **No** box.

**Question 9: Start date of event.** Enter 16/09/2024.

**Question 10: Describe the event, including any mitigating factors.** Add text 'Request in writing made for documents required to verify accounts. Leon took 2 months to provide documents because he was away and could not be contacted.'

**Question 11: Have all the contraventions been fully rectified or do the trustees have a plan to fully rectify all of them?** Place an X in the **Yes** box.

**Question 12: What is the estimated completion date, or if fully rectified, when was this completed?** Enter 16/11/2024.

**Question 13: Describe any steps taken to rectify the contraventions or any planned steps to rectify the contraventions.** Add text 'Documents were provided by the client when he returned and became aware of the request.'

**Question 14: What sections/regulations have been, or may be, contravened?** Enter s35C(2).

**Question 15: What is the maximum value of the contravention?** Leave this blank.

**Question 16: Has the contravention been fully rectified?** Place an X in the **Yes** box.

**Question 17: What is the outstanding value to be rectified (last known)?** Leave this blank.

### Event 4

**Question 8: Did the event commence before the audit period?** Place an X in the **No** box.

**Question 9: Start date of event.** Enter 01/07/2023.

**Question 10: Describe the event, including any mitigating factors.** Add text 'The fund assets include unlisted shares with a reported value of \$100,000. Leon has not provided documents to prove the market value of the unlisted shares. Although the estimated value of the contravention is unknown, it is considered to be greater than \$30,000.'

**Question 11: Have all the contraventions been fully rectified or do the trustees have a plan to fully rectify all of them?** Place an X in the **No** box.

**Question 12: What is the estimated completion date, or if fully rectified, when was this completed?** Leave this blank.

**Question 13: Describe any steps taken to rectify the contraventions or any planned steps to rectify the contraventions.** Add text 'Leon has provided unaudited financial statements with the unlisted shares valued at cost. Following the recent sale of shares in the company to an unrelated party, Leon is in the process of obtaining sales data to support the market value of the unlisted shares.'

Note: Signed unaudited financial statements for the private company will usually list the shares at cost and can't be used to verify their market value. Signed financial statements however may be used to assess the private company's ability to continue as a going concern.

**Question 14: What sections/regulations have been, or may be, contravened?** Enter R8.02B.

**Question 15: What is the maximum value of the contravention?** Enter 100,000.

**Question 16: Has the contravention been fully rectified?** Place an X in the **No** box.

**Question 17: What is the outstanding value to be rectified (last known)?** Leave this blank.

## Section F: Financial position

### Question 18

**While performing your duties, did you form the opinion that the SMSF's financial position is, or may become, unsatisfactory?**

Place an X in the applicable box.

If you answer 'Yes', explain why you formed that opinion.

Where possible, clarify if the unsatisfactory position is due to a regulatory breach or other circumstances.

If the unsatisfactory position is due to breaches of the sections and regulations listed in tables 1A and 1B, you need to assess if these should be reported at Section E: Contraventions.

To determine if the financial position of the fund is unsatisfactory:

If the SMSF is an accumulation fund, its financial position is unsatisfactory if, in the opinion of the auditor, either the:

- fund's assets are inadequate to cover the aggregate benefit accounts of the fund members, or
- value of fund assets is inadequate to cover the value of the fund's liabilities in respect of benefits accrued to fund members.

If the SMSF is a defined benefit fund, the test is whether the value of fund assets is inadequate to cover the value of the fund's liabilities in respect of benefits vested in the fund members.

The likelihood of the value of fund assets being inadequate must be based on the reasonable expectation of an actuary on whose advice the auditor has relied in relation to the matter.

## **Section G: Other regulatory information**

### **Question 19**

This section allows you to report any other concerns, in addition to the events and contraventions you have already reported about either the fund or the trustees where you believe these will help us in performing our functions as the regulator of SMSFs.

Don't use this section if you have no compliance issues or other relevant issues of concern to report.

Don't use this section for reporting a contravention of section 35D (fund has failed to lodge its annual return by the due date) as we are

able to detect these contraventions. Information related to an event or contravention listed in Table [1A](#) or [1B](#) (such as subsection 35C(2)) must be reported at Section E: Contraventions. This information should not be included here.

If you want to provide more information, place an X in the **Yes** box.

Before you complete this section, consider if you consent (under paragraph 14ZZW(2)(e) of the *Taxation Administration Act 1953* for the purposes of the tax whistleblower legislation), to disclosing to the Commissioner of Taxation your identity (if required) when using this information in administering any taxation laws.

If you would like to keep your identity confidential, place an X in the **No** box and don't enter the additional information into Section G of the ACR. You can make a disclosure by completing the **tip-off form**. Alternatively, find the form in the **Contact us** section of the ATO app or phone in your tip-off on **1800 060 062**.

If you consent to the Commissioner disclosing your identity (if required) when using this information in administering any taxation laws, place an X in the **Yes** box and enter the additional information, explaining why you formed that opinion.

Examples of things you may consider reporting in Section G include:

- recurring contraventions of non-reportable sections or regulations
- questionable conduct of trustee, tax agent, or administrator during engagement, such as undue pressure or influence to provide an unqualified audit report
- concerns you have resulting from a trustee failing to cooperate with you or terminating your engagement, for example, where an audit engagement was terminated because a contravention was identified
- questionable conduct of a previous SMSF auditor, including where previous contraventions were not identified.

We encourage you to report this type of conduct to us at Section G so we can consider whether any compliance action needs to be taken against the fund.

If you are providing information about breaches of the sections and regulations listed in table 1A and 1B, you need to assess if these should be reported at Section E: Contraventions.

## Section H: Auditor/actuary declaration

Provide your SMSF auditor number (SAN).

Your SAN was issued to you by the Australian Securities & Investments Commission (ASIC) when you become a registered SMSF auditor.

SMSF auditors must be registered with ASIC to be able to conduct audits of SMSFs and provide their SAN on any audit documents.

Sign and date the Auditor/actuary declaration. By signing the declaration, you are stating that:

- you are qualified to conduct an audit
- you were appointed by the trustees to conduct an audit of their fund
- the information provided in the report is accurate and complete.

You must complete the declaration.

QC 17603

## Addendum for financial years impacted by COVID-19

Financial impacts of COVID-19 on SMSF trustees.

**Last updated** 11 March 2025

Due to the financial impacts of COVID-19, SMSF trustees found themselves providing or accepting certain types of relief which may or may not give rise to contraventions under the super laws.

This addendum to the ACR instructions applies to the 2019–20, 2020–21 and 2021–22 financial years only. It covers the following 5 areas of relief:

- providing rental relief
- loan repayment relief, including limited recourse borrowing (LRBA) repayment relief
- in-house asset relief

- market valuations
- early release of super on compassionate grounds due to COVID-19 (only relevant for the 2019–20 and 2020–21 financial years).


It provides guidance and examples on when contraventions will arise because of the relief and advises which ones to report to the Commissioner in the ACR for the 2019–20, 2020–21 and 2021–22 financial years where the reporting criteria is met.

## Providing rental relief

Some SMSF trustees who are landlords have given their tenants rental relief as a rent reduction, waiver or deferral because of the financial effects of COVID-19. A related party (company or unit trust) the fund has an investment in may also offer rental relief to a tenant.

In these situations, the following contraventions of the SISA could arise.

- Section 109 – if the rental relief has been offered on non-arm's length terms.
- Section 62 – if the SMSF trustee is offering rental relief on non-arm's length terms to assist a related or non-related party.
- Section 65 – if rental relief is offered to a member or relative of the member, either directly or indirectly, it can amount to providing financial assistance even where it is provided on an arm's length basis (see Self-Managed Superannuation Funds Ruling **SMSFR 2008/1**).
- Section 84 – if a rental deferral is offered because of the financial impacts of COVID-19 it can meet the definition of a loan (see paragraphs 10 and 11 of Self-Managed Superannuation Funds Ruling **SMSFR 2009/4**) and may have in-house asset implications if the deferral is offered on non-arm's length terms.
  - Where a rental deferral is offered directly to a related party on non-arm's length terms, any resulting loan will be an in-house asset of the fund. If a rental deferral is offered to a tenant on non-arm's length terms by a regulation 13.22B or 13.22C entity (company or unit trust) the fund has an investment in, this will also cause that investment to become an in-house asset. This may give rise to a contravention of the in-house asset provisions.

- Where the rental deferral has been provided on arm's length terms during the 2019–20, 2020–21 and 2021–22 financial years, the relevant asset will not be an in-house asset in these and all future financial years. This is provided the following apply:
  - [Self-Managed Superannuation Funds \(COVID-19 Rental income deferrals – In-house Asset Exclusion\) Determination 2020](#) , or
  - [Superannuation Industry \(Supervision\) Self-Managed Superannuation Funds \(COVID-19 Rental Income Deferrals – In-House Asset Exclusion\) Determination 2022](#) .
- Where these determinations apply in relation to rental deferral relief, there is no in-house asset that may give rise to a contravention of section 84 for you to consider reporting.
- Where the fund has invested in a regulation 13.22B or 13.22C entity and the company or trustee of the unit trust has offered a rental waiver or reduction that is not on arm's length terms, this can trigger an event in regulation 13.22D(l) resulting in the fund's investment becoming an in-house asset in the current and future financial years.

Where rental relief satisfies the following 3 requirements, that is, where it is on commercial terms, due to the financial impacts of COVID-19 and appropriately documented, a section 109 or section 62 contravention will not arise.

Where there has been a contravention of section 65 due to the provision of rental relief to a member or a relative of the member that meets the 3 requirements, you are not required to report this contravention. This is because our compliance approach for the 2019–20, 2020–21 and 2021–22 financial years is that we will not take action against this type of breach.

## 1. Commercial terms

Where the rental relief offered by the trustee is commensurate with rental relief being offered by other landlords to unrelated tenants in similar circumstances, a section 62 and section 109 contravention will not arise. You can use your professional judgment in forming an opinion on the commerciality of the arrangement.

Depending on when the rental relief was offered, the National Cabinet Mandatory Code of Conduct (national code), which was given effect through various state or territory legislation from a date following 3 April 2020, can also be used to provide assistance on whether the relief arrangement is commercial.

The national code contained a set of good faith leasing principles applicable to all commercial tenancies that suffered financial stress or hardship because of the COVID-19 pandemic as defined by their eligibility for the Commonwealth Government's JobKeeper scheme. However, the principles of the national code still applied in spirit to all leasing arrangements for affected businesses, having fair regard to the size and financial structure of those businesses, including non-commercial leases where the relief was provided on commercial terms.

When the national code was introduced, the state and territory jurisdictions introduced measures to help landlords and tenants during the coronavirus crisis. It was also expected that the states and territories give effect to the national code through relevant state and territory legislation and regulations as appropriate. The national code was not intended to supersede such legislation but aimed to complement it during the COVID-19 crisis period.

The national code principles remained in place for the period the Commonwealth JobKeeper program was operational, which ceased on 28 March 2021.

The national code, and related state and territory rules, can be used to help determine whether the arrangement entered into is commercial while they were in effect.


Some key requirements to note when applying the national code are as follows:

- The tenant will need to self-assess whether they have been adversely impacted and a rental tenancy relief request made in writing.
- Rental relief is provided in proportion to the loss of income experienced from the COVID-19 crisis and where a tenant is insolvent, the tenant may not be liable to pay rent.
- It will apply to negotiating any amendments to existing leasing arrangements in good faith, including where the parties are related.

- The tenant should stay committed to lease terms, subject to any amendment. The parties may have drafted an amended lease agreement for rental relief due to COVID-19 for a term of up to 6 months, consistent with the period allowed by banks for the deferral of loan repayments for small businesses who need assistance because of COVID-19.
- The tenant will need to be current with their rental payments and not in arrears as of 1 January 2020, consistent with banking requirements in relation to loan repayment relief.
- Rental relief arrangements should be comparable with other similar lease agreements and in line with COVID-19 market conditions.

We appreciate that the national code is no longer in effect for rental relief. However, it is possible that trustees may have offered rental relief to tenants between 28 March 2021 and 30 June 2021.

They may also be offering similar relief (if they can still demonstrate that the relief is provided due to the financial impacts of COVID-19) during the 2021–22 financial year, as part of transitional COVID-19 support measures provided by the states and territories. Where this is the case, auditors can use the state and territory transitional support measures as a guide to determining whether any rental relief has been offered on arm's length terms. Otherwise, auditors can use their own professional judgment when determining whether rental relief is offered on commercial terms due to the financial effects of COVID-19.

Find details about [COVID-19 financial support for business](#)  that may be available, including government assistance in each state or territory.

When applying the national code or individual state or territory requirements, including transitional support measures, to determine whether rental relief is commercial, ensure you apply the relevant requirements that existed at the time the SMSF trustee provided the relief. This would allow for any amendments made to the various documents over time.

## **2. Rental relief must be offered as a result of the impacts of COVID-19**

If the trustee offered rental relief to a tenant but there is no evidence of the tenant being impacted by COVID-19, then it has not been offered in good faith. Relevant contraventions must be reported if they

meet the reporting criteria. An example of evidence that meets this requirement is the tenant's confirmation of registration or monthly declaration for the JobKeeper scheme.

### **3. Appropriate documentation must be put in place reflecting the rental relief arrangement**

If there are temporary changes to the terms of the lease agreement in response to COVID-19, it is important that the parties to the agreement document the changes and the reasons for the change. The trustees can do this with a signed minute (where, for example, the trustees and the tenant are related parties).

However, it is prudent to give effect to the changes by way of an agreement signed by both the parties and attach it as an addendum to the lease. It is also important to review the lease agreement as this may require a formal variation of the lease to be drafted or a renewed lease agreement. The documentation must also be executed contemporaneously once varied terms are agreed to by the parties. The parties must then adhere to the new lease arrangement to ensure the fund is not in breach of section 109 and section 62 of the SISA.

### **In-house assets and rental deferral relief (including by a Division 13.3A entity)**

If a fund offers a rental deferral directly to a related party, this is considered a loan from the fund to the related party (see paragraphs 10 and 11 of Self-Managed Superannuation Funds Ruling SMSFR 2009/4) which would ordinarily be an in-house asset of the fund.

If a fund has an investment in a related party that is exempt from being an in-house asset under paragraph 71(1)(f) of the SISA due to the operation of Division 13.3A of the SISR (regulation 13.22B and 13.22C), and the related party offers a rental deferral to a tenant under a lease, this will trigger a regulation 13.22D event, causing the:

- exemption to cease, and
- fund to acquire and hold an in-house asset.

This is because the rental deferral amounts to a loan from the related party to the tenant and the exemption provided by regulation 13.22B or 13.22C of the SISR ceases if the related party provides a loan to another entity – see subparagraph 13.22D(1)(b)(ii) of the SISR.

If the value of the asset, or the total value of the fund's in-house assets, exceeds the 5% in-house asset threshold at the end of the financial year, the fund would ordinarily need to dispose of the asset, or the excess before the end of the next financial year.

The following Legislative Instruments affect the application of in-house asset rules for the 2019–20, 2020–21 and 2021–22 financial years:

- [Self-Managed Superannuation Funds \(COVID-19 Rental income deferrals – In-house Asset Exclusion\) Determination 2020](#)  (registered 27 November 2020)
- [Superannuation Industry \(Supervision\) Self-Managed Superannuation Funds \(COVID-19 Rental Income Deferrals – In-House Asset Exclusion\) Determination 2022](#)  (registered 2 March 2022).

Under these determinations, made for the purposes of paragraph 71(1) (f), the resulting asset is not an in-house asset of the fund for the 2019–20, 2020–21 and 2021–22 financial years, nor any future financial years provided the following conditions are met:

- The fund allows a related party tenant a deferral of rental income under a lease agreement (on arm's-length terms) due to the financial impacts of COVID-19.
- The fund holds an investment in a related party (related company or unit trust) which is exempt from being an in-house asset due to the operation of regulation 13.22B or regulation 13.22C, and that related party allows a tenant a deferral of rental income under a lease (on arm's length terms) due to the financial impacts of COVID-19.

It also only applies where none of the other events in regulation 13.22D are triggered during one or more of the 2019–20, 2020–21 and 2021–22 financial years.

Extra care should be taken to ensure the parties remain dealing at arm's length. This is because failure to do this can amount to an event under paragraph 13.22D(1)(I) of the SISR.

Where the determinations apply, SMSF auditors will not be required to report a contravention to us or to advise trustees of the contraventions which would otherwise result, in relation to the 2019–20, 2020–21, 2021–22 or future financial years.

The determinations don't apply to rental waivers or reductions as this type of relief does not of itself give rise to an in-house asset. We won't

be taking any compliance action for the 2019–20, 2020–21 and 2021–22 financial years if a fund gives a tenant, even one who is also a related party, a temporary rent reduction or waiver on arm's length terms because of the financial effects of COVID-19.

Where the fund has invested in a regulation 13.22B or 13.22C entity and the company or trustee of the unit trust has offered a rental waiver or reduction that is not on arm's length terms, this can trigger an event in paragraph 13.22D(1)(I). If this occurs, the in-house asset exemption will cease, resulting in the fund's investment becoming an in-house asset in the current and future financial years.

## **When should you report contraventions for rental relief?**

You should only report a contravention if it meets the reporting criteria and you are not satisfied that all the following requirements have been met:

- The relief offered by the SMSF trustee or interposed entity was on commercial terms.
- The relief has been offered due to the adverse financial impacts of COVID-19.
- The relief arrangement was adequately documented.

In this case, report the contravention and explain in the ACR why you think there is a breach. You will also need to consider whether you qualify Part B of the audit report and you will need to communicate the issue to the trustee as per section 129 of the SISA.

If we subsequently find the relief was genuinely provided because of COVID-19 then we won't take compliance action against the fund.

We will also not apply the non-arm's length income (NALI) rules where SMSF trustees were able to provide rental relief, however the tenant did not request or require the relief.

### **Example: providing rent relief to a related party on commercial terms**

John and Sue are the individual trustees of the John & Sue SMSF. Their SMSF owns the property from which they also run a

restaurant business together. Each month they pay their SMSF \$1,200 in rent under the lease.

Due to the impacts of COVID-19, John and Sue were required to close their restaurant temporarily. The business was eligible for JobKeeper as they suffered a 40% reduction in turnover. However, they struggled to maintain their lease payments, therefore they request their SMSF provide proportionate rent relief of 40% for a 6-month period commencing 10 April 2020.

The national code for SME commercial leasing principles during COVID-19 guides in determining whether the relief is on commercial terms applies. John and Sue met the code requirements as the SMSF related-party tenant both qualified for the JobKeeper scheme and met the standard of arm's-length dealing. The national code required that John and Sue be offered rent relief proportionate to the reduction in turnover of 40%, however at least 50% of the relief must be by way of a waiver with any balance being a deferral. Accordingly, the minimum rent relief is a 20% waiver and 20% deferral of rent.

John and Sue, in their capacity as trustees of their SMSF, agreed to temporary rent relief based on the financial impacts COVID-19 had on the restaurant and their ability to meet their lease payments. They immediately drafted and signed an agreement in their respective capacities (that is, where the trustees of the SMSF are the landlord and John and Sue are the tenants). This acknowledged the request for rental relief, the reasons relief was given and the varied terms for the next 6 months with a right to review at the time. The rent remains at arm's length through the period. No contravention of section 62, section 84 or section 109 of the SISA occurred and the auditor is not required to report the section 65 contravention in the ACR.

**Note:** If John and Sue's business had suffered a reduction in turnover of only 20% and they were not eligible for JobKeeper, they would not have been covered under the national code. However, they could still reach an arm's-length agreement for rent relief proportionate to the reduction in turnover if they could show that their business was negatively affected by COVID-19.

### **Example: providing rent relief that is not on commercial terms**

Ned's SMSF rented an investment property to his friend Bill for the last 5 years. Bill always paid a commercial amount of rent based on the property's value. At the start of the 2019–20 financial year, Bill had a steady job as manager of a supermarket. However, he started to incur some large personal debts and fell behind on his rental payments from August 2019 onwards. Ned told him that he can just catch up when he can afford the payments.

By the end of June 2020 Bill still had not caught up on the rental arrears payments. He asked Ned if he can just waive the payments because he heard other landlords are doing that due to COVID-19. Bill was not financially impacted by COVID-19. Ned agreed to do this because they are friends. As the rental relief wasn't provided due to the financial impacts of COVID-19, Ned's auditor reports a section 62 and 109 contravention in this situation.

## **Loan repayment relief (including for limited recourse borrowing arrangements)**

Due to the financial impacts of COVID-19, some commercial lenders and related parties were offering SMSFs temporary loan repayment relief on limited recourse borrowing arrangements (LRBA). An SMSF may have also offered loan repayment relief in relation to a loan it had made to a related or unrelated party who had been financially impacted by COVID-19.

### **Related party providing SMSF LRBA relief**

Temporary repayment relief may have been offered in relation to an existing LRBA between an SMSF and a lender, due to the financial effects of COVID-19.

This repayment relief may have involved the lender accepting that loan repayments are deferred for a certain period. It might also have required interest to be capitalised on the loan during the deferral period and allowed for the loan to be extended to reflect the

repayment relief. The variation in loan terms offered as part of the relief might have also meant that the SMSF was no longer able to meet the safe harbour loan terms that we accept are consistent with an arm's length dealing.

Where a commercial lender such as one of the major banks offered loan repayment relief to an SMSF in respect of an LRBA on commercial terms, it is clear the arrangement was made and maintained on an arm's length basis. However, the situation is less clear where a related party offered an SMSF this type of relief. It is possible a section 109 contravention may have arisen if the relief was not offered on arm's length terms. The non-arm's length income (NALI) rules might also apply.

Shortly after COVID-19 was declared a global pandemic, the Australian Banking Association website provided examples of the type of loan repayment relief commercial banks were offering as a result of the financial impacts of COVID-19. This included the following:

- interest and principal repayments on the loan suspended for up to 6 months (with an extension of up to an additional 4 months to 28 March 2021)
- interest to continue to accrue on the loan during the deferral period
- accrued interest to be capitalised on the loan and form part of the amount to be repaid over the term of the loan or in some cases an extended loan term
- the borrower must have been financially impacted by COVID-19
- the borrower must not terminate a lease or evict a tenant for rent arrears during the loan deferral period.

We understand that the Australian Banking Association website no longer provides examples of commercial loan repayment relief. However, we trust that auditors can still use their professional judgment when determining whether relief is offered on commercial terms due to the financial effects of COVID-19.

Provided the related party lender offered the fund temporary LRBA repayment relief as a result of the financial impacts of COVID-19 and on similar terms to that offered by commercial banks for real estate investment loans, and the trustee can provide evidence of the commercial terms that existed when the relief was provided, we will

accept the parties are dealing at arm's length. There will be no contravention of section 109 and the NALI provisions do not apply.

To be on commercial terms, the SMSF trustee must also document any changes in terms to the loan agreement and the reasons why those terms have changed. It is also expected that there is evidence that interest continues to accrue on the loan and that the SMSF trustee will repay any deferred principal and interest repayments in accordance with the varied terms.

### **Division 7A, LRBA repayment relief and minimum yearly repayments**

If an SMSF has entered into a LRBA with a related private company where Division 7A of the *Income Tax Assessment Act 1936* applies, and the company offered the fund LRBA repayment relief due to the financial impacts of COVID-19 on similar terms to that offered by a commercial lender, this will not give rise to any NALI consequences.

Typically, LRBA repayment relief offered by commercial banks included the requirement to capitalise interest on the loan.

Where temporary repayment relief has been given with respect to an LRBA between an SMSF and a lender and that loan is also a Division 7A loan, there will be no Division 7A consequences as a result of the interest being capitalised on the loan. However, interest that is capitalised does not count as a payment in determining if the minimum yearly repayment has been met for Division 7A purposes. Therefore, to avoid the unpaid amounts being taxed as unfranked dividends, an SMSF in this position can apply for Division 7A administrative relief if they are unable to make the minimum yearly repayment by the relevant due date under the Division 7A rules.

Whilst there is nothing preventing the capitalisation of interest on Division 7A loans under the Division 7A administrative relief, we understand that there is a view that interest cannot be capitalised on such loans given their Division 7A nature.

Therefore, for the 2019–20, 2020–21 and 2021–22 financial years, where an LRBA between an SMSF and a lender is subject to repayment relief but unpaid interest on the loan is not capitalised, we will not take compliance action to determine if the NALI provisions apply provided that the following conditions are all met.

- The LRBA is subject to a **Criteria of a complying loan agreement** (for Division 7A purposes).

- The SMSF has met their minimum yearly repayment or has applied for Division 7A administrative relief where they have been unable to meet the minimum yearly repayment.
- Temporary repayment relief is due to the financial effects of COVID-19 on the SMSF.
- Repayment relief is otherwise on similar terms to that offered by commercial banks.

## **When to report a contravention**

The trustee(s) should document and provide evidence to you of the circumstances that have been considered to provide the loan relief. If you consider that they maintained an arms-length arrangement, there is no contravention of section 109 of the SISA and an ACR is not required to be lodged.

If in your professional judgment, you do not believe that loan relief was provided on an arms-length basis, then you should follow the reporting criteria for lodging an ACR and report a section 109 contravention. You will also need to consider whether you qualify Part B of the audit report and will need to communicate the issue to the trustee as per section 129 of the SISA.

We would also not look to apply the NALI rules where the SMSF could have taken advantage of LRBA relief but chose not to.

### **Example: providing loan repayment relief on commercial terms**

Angela is director of the corporate trustee of her SMSF which borrowed money to purchase an investment property within her SMSF from her parents (a related party) under an LRBA. The tenants renting the property applied to Angela for a rent reduction due to the impacts of COVID-19. Angela agreed to a reduction in rent equivalent to the reduction in their turnover. As Angela's SMSF did not receive the full amount of rent, her SMSF was financially impacted by COVID-19.

Angela researched what banks were offering for investment loans for real estate in relation to COVID-19. She made a request to her lender, her parents, to temporarily defer the loan repayments for the next 6 months with the interest being

capitalised on the loan and repaid over the term of the loan. Angela and her parents agreed to review the deferral arrangement in 6 months. Angela documented the changes to the loan terms, including the reasons for the changes, in an agreement signed by both Angela as trustee of her SMSF and her parents. She then kept it as evidence to support her application for loan relief.

Angela transacted on an arm's-length basis in relation to the varied loan terms, so there is no contravention of section 109 and the NALI provisions do not apply.

## **SMSF trustee providing loan repayment relief**

Where an SMSF loaned money on commercial terms to an unrelated party or a related party and the loan did not breach the in-house asset rules or section 65 of the SISA (as per Self-Managed Superannuation Funds Ruling **SMSFR 2008/1**), the borrower may have experienced difficulty repaying the loan due to the financial impacts of COVID-19. In this case, the trustee may have provided the borrower with some loan repayment relief. As long as the repayment relief is on commercial terms, has been necessary due to the financial impacts of COVID-19 and is appropriately documented, you will not need to report a contravention of section 109 or section 62.

Where the loan is to a related party, the loan will constitute an in-house asset, and the fund's 5% in-house asset threshold may be exceeded at year end as a result of providing the loan repayment relief. If this is the case, the trustee should still prepare a plan to dispose of the excess by the end of the following financial year. However, if the plan can't be executed by the end of the following financial year due to the ongoing financial impacts of COVID-19, an in-house asset breach does not need to be reported in the ACR.

## **In-house asset relief**

If the value of the fund's in-house assets exceeds 5% of the fund's total assets as at 30 June of a financial year, the in-house asset rules in the SISA require trustees to prepare and execute a written plan to reduce the market value ratio of the fund's in-house assets to below 5% by the end of the following financial year.

The downturn in the market in some areas due to COVID-19 may have resulted in the value of the fund's in-house assets being more than 5% of the fund's total assets.

We understand it might be difficult for funds who exceeded the 5% in-house asset threshold as at 30 June of the 2019–20, 2020–21 or 2021–22 financial years to prepare and execute a plan to dispose of the excess by 30 June of the following year.

While funds who exceeded the in-house asset threshold as at 30 June of the 2019–20, 2020–21 or 2021–22 financial years must still prepare a plan to dispose of the excess, we will not take compliance action against the fund where the trustee is unable to execute the plan and rectify the in-house asset breach by 30 June of the following financial year due to the financial impacts of COVID-19. For example, the rectification plan may not be able to be executed because the market has not recovered, or it may be unnecessary to implement the plan as the market had recovered.

This means you will not need to report in-house asset contraventions for the 2019–20, 2020–21 and 2021–22 financial years, where the in-house asset position is impacted by the financial effects of COVID-19.

### **Example: in-house asset relief**

During the 2019–20 financial year, Jill's SMSF makes a loan to a related party. The loan is on commercial terms, the value of the loan is under the 5% in-house asset threshold and the transaction does not contravene section 65 of the SISA. However, due to the financial impacts of COVID-19, the borrower became unable to repay the loan during the financial year. Jill's SMSF provides loan repayment relief on commercial terms.

At 30 June 2020, as a result of the loan relief and other assets in Jill's fund including listed securities declining in value, the value of the loan exceeds the 5% in-house asset threshold at year end. The trustees provide evidence to their SMSF auditor of the reasons for providing the loan repayment relief (which is due to COVID-19). Interest continued to accrue and was capitalised on the loan. Appropriate documentation is kept in place to demonstrate the varied loan terms.

The trustee prepares a plan to dispose of the excess in-house assets by the end of the following financial year. However, if they are unable to execute the plan by 30 June 2021 due to the ongoing impacts of COVID-19, they do not need to report an in-house asset breach in the ACR for the 2020–21 financial year.

## Market valuations

There is no change to the reporting requirements in relation to regulation 8.02B of the SISR.

Where you are not provided with evidence from the trustees that the fund assets have been reported in the financial statements at market value and the contravention meets the reporting criteria, an ACR should be lodged as per normal requirements.

We do however understand that trustees may have experienced difficulties due to the impacts of COVID-19 in obtaining objective evidence to support the valuation of assets as per the requirement in the SMSF valuation guidelines.

If this is the case you should provide reasons in the ACR as to why the trustee was unable to obtain the appropriate evidence and if we are satisfied this was due to the impacts of COVID-19, the contravention will not result in any penalties.

For more information see [Verifying the market value of the fund assets](#).

## Early release of super on compassionate grounds due to COVID-19

This relief only applies to the 2019–20 and 2020–21 financial years.

From 20 April 2020, eligible SMSF members were able to access up to \$10,000 of their superannuation before 1 July 2020 and up to a further \$10,000 from 1 July 2020 until 24 September 2020 to deal with the adverse economic effects from coronavirus. The eligibility criteria are set out in regulation 6.19B of the *Superannuation Industry Supervision Regulations 1994* (SISR).

Members can no longer apply for early access to their super on compassionate grounds due to COVID-19, with applications for the program closing on 31 December 2020. However, auditors still need to be satisfied that any super released from the fund on this basis during the 2019–20 and 2020–21 financial years complies with the SISR rules.

In relation to forming an opinion on whether the fund has complied with the payment standards in regulation 6.17 of the SISR with respect to this compassionate condition of release, you need to ensure the member has not illegally early accessed their benefits.

This means checking that the trustee has a determination from the Commissioner confirming the member is eligible for early release of super and having regard to any provisions in the trust deed constraining such payments. You will not be expected to check that the member has met the eligibility requirements listed under regulation 6.19B of the SISR. However, if you suspect or find out during the audit that the member did not meet the eligibility requirements, you can report this information at Section G 'Other Regulatory Information' of the ACR.

The determination is the document received from us which specifies the super fund or funds and the amount of the preserved benefits or restricted non-preserved benefits that may be released from each fund. It is usually issued to the member (who also serves as the trustee for the purpose of paragraph 6.17D(2)(b) of the SISR in this case) electronically via myGov or alternatively it can be issued by hard copy in the mail.

We expect you to report a regulation 6.17 contravention where the amount subject to the determination has been released prior to the trustee receiving a copy of the determination, if that contravention meets the reporting criteria.

Sub regulation 6.17D(3) of the SISR states that the trustee must pay the member the amount approved for release 'as soon as practicable' after receiving the determination. That phrase is not defined in the regulations and the timing of payment may be dependent on several factors, such as where the fund did not have sufficient liquid assets and disposed of some of those assets to facilitate the payment. In such cases, you can use your professional judgment as to whether you think the payment has been made as soon as practicable based on the fund's circumstances.

Where a member has received the determination, they may have decided to no longer pursue release of the benefits or may have released a smaller amount than the amount stipulated in the determination. While this constitutes a breach of the payment standards, you are not required to report a contravention of regulation 6.17 in these circumstances.

If a trustee released the amount stipulated in the determination in multiple lump sums, this would amount to a breach of regulation 6.17 as a result of the cashing restrictions in item 107A of the table in Schedule 1 of the SISR. These require that the amount specified in the determination is to be released in one single lump sum not exceeding the amount specified in the determination. This breach will need to be reported where the reporting criteria is met.

QC 17603

## More information

Guidance notes to help complete the Auditor actuary contravention report.

**Last updated** 11 March 2025

## Privacy statement

Taxation law authorises us to collect information including personal information and to disclose it to other government agencies.

For more information see [Your privacy](#).

## Contact us

For help with completing this form or for more information:

- phone us on **13 10 20**
- write to us at

**AUSTRALIAN TAXATION OFFICE**

**PO BOX 3100  
PENRITH NSW 2740**

## **Further information**

For further information, see

- **SMSF auditors**
- **Auditor reporting requirements to ATO**
- **Self-managed superannuation fund independent auditor's report (NAT 11466)**
- **Approved SMSF auditors in Online services for business**

**QC 17603**

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We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

If you feel that our information does not fully cover your circumstances, or you are unsure how it applies to you, contact us or seek professional advice.

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