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## SMSF STRATEGIES SPECIALIST SMSF ADVISER TRAINING

Module 3 – Corporations Act 2001 and SMSF

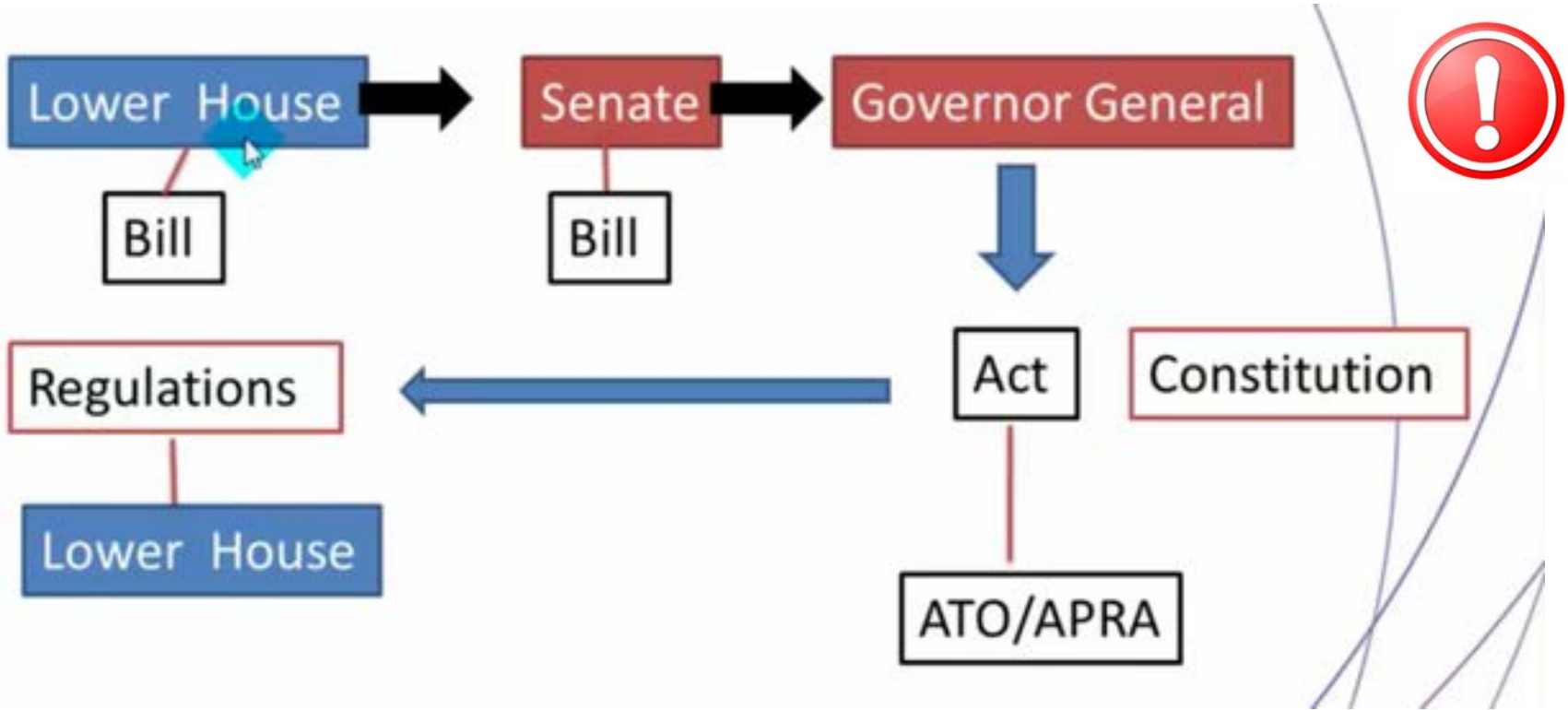


# PREVIEW OF MODULE 3

## QUIZ QUESTIONS (MULTIPLE CHOICE ANSWERS)

- ❖ The purpose of the Financial Services Reform Act – now found in section 760 of the Corporations Act is ...
- ❖ Under the Corporations Act 2001 a SMSF is ...
- ❖ The Federal Government makes laws by ...
- ❖ A regulated super fund under section 19 should ...
- ❖ A Product Disclosure Statement ...

# HOW LAWS ARE MADE



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# SECTION 19 OF THE SIS ACT

## SIS Act - Section 19

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/sia1993473/s19.html](http://www.austlii.edu.au/au/legis/cth/consol_act/sia1993473/s19.html)

### SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 - SECT 19

#### Regulated superannuation fund

##### Definition

(1) A regulated superannuation fund is a superannuation fund in respect of which subsections (2) to (4) have been complied with.

##### Fund must have a trustee

(2) The superannuation fund must have a trustee.

##### Trustee must be a constitutional corporation or fund must be a pension fund

(3) Either of the following must apply:

- (a) the trustee of the fund must be a constitutional corporation pursuant to a requirement contained in the governing rules;
- (b) the governing rules must provide that the sole or primary purpose of the fund is the provision of old-age pensions.

##### Election by trustee

- (4) The trustee or trustees must have given to APRA, or such other body or person as is specified in the regulations, a written notice that is:
- (a) in the approved form; and
  - (b) signed by the trustee or each trustee;

- Set up the fund to comply with Section 19(3)(a) not (b) – (b) is too limiting. Does not allow enough scope, ie, transition to retirement income stream, disability, death benefits.
- Critical to have a strong structure for the fund from the start.

# SMSFS AND THE CORPORATIONS ACT 1991

The purpose of the FSRA is found in Section 760A of the Corporations Act 2001 which states:

*The main object of the new laws, amongst other things is to promote:*

- a. confident and informed decision making by consumers of financial products and services while facilitating efficiency, flexibility and innovation in the provision of those products and services;
- b. fairness, honesty and professionalism by those who provide financial services



This section requires that ***any person who conducts a financial services business must hold an Australian Financial Services License (AFSL).***

What are accountants currently exempt from?

# SMSFS AND THE CORPORATIONS ACT 1991

- In response to the Cooper Review the Government has agreed to increase the underlying standards of providing advice for SMSFs in terms of RG146 to a specialist level.
- Achieving this standard forms the basis for this course.

Option	Knowledge component (qualifications, training etc)	Skills component (experience)
Option 1 (see RG 105.50–RG 105.52)	Meet widely adopted and relevant industry standard or relevant standard set by APRA	3 years relevant experience over past 5 years
Option 2 (see RG 105.53–RG 105.55)	Be individually assessed by an authorised assessor as having relevant knowledge equivalent to a diploma	5 years relevant experience over past 8 years
<b>Option 3</b> <b>(see RG 105.56–RG 105.60)</b>	Hold a university degree in a relevant discipline <b><i>and complete a relevant short industry course</i></b>	3 years relevant experience over past 5 years
Option 4 (see RG 105.61–RG 105.65)	Hold a relevant industry- or product-specific qualification equivalent to a diploma or higher	3 years relevant experience over past 5 years
Option 5 (see RG 105.66)	If not relying on Options 1–4, you need to provide a written submission that satisfies us that your responsible manager has appropriate knowledge and skills for their role. Your submission must cover all of the information in RG 105.66	

# SMSFS AND THE CORPORATIONS ACT 1991

NOTE: The Corporations Act 2001 is extremely detailed and participants are not required to know every word of the Act in depth. What you should know is that you must provide an SMSF client with these **3 key documents**:

1. **Financial Services Guide** – authorising the adviser to provide specific SMSF advice to a client. Refer to fwgs FSG in the back of your notes.
2. **Product Disclosure Statement** – advises risks and benefits of a specific SMSF financial product such as a transition to retirement income stream, contribution, lump sum or account based pension.
3. **Statement of Advice** – provides background of the client's financial affairs, their goals and objectives, the legislative options for the client, fees and (oh yes) recommendations



# PENALTIES FOR RECOMMENDING A SMSF WITHOUT A LICENSE



- Schedule 3 of Section 457 provides a list of penalties that apply in respect of the breach of certain provisions of FSRA.
- Where a person breaches Section 911A (the recommendation of a SMSF without a license) the Court imposes penalty as a fine of **\$220,000 or imprisonment for two years or both.**
- Likewise where a person acting as an employer or authorised representative of a principal recommends a SMSF without being authorised by the principal, the person faces a Court imposed penalty of **\$220,000 or imprisonment for two years or both.**



# IS A SMSF A FINANCIAL PRODUCT?

- From a SMSF perspective, Section 764A(1)(g) provides that a superannuation interest within the meaning of the Superannuation Industry Supervision Act 1993 **is a financial product**.
- Section 10(1) of the SIS Act defines a superannuation interest as a beneficial interest in a regulated superannuation fund.
- Therefore, **any** interest in a SMSF is deemed to be a financial product for the purposes of FSRA e.g., a contribution, or a TRIS.



# IS A SMSF A FINANCIAL PRODUCT?

Complete Activity – SMSF Beneficial Interests (p. 21) – 10 minutes

John Smith, aged 60 comes to you with his SMSF and wishes to commence an Income Stream with the \$400,000 in his accumulation account. His wife Sarah has \$300,000 in an accumulation account but is only 54 and not entitled to access her benefits yet. John stopped work earlier this year but has since continued on with a consulting arrangement with his former employer. He will continue to make self employed contributions into super.

How many financial products are considered in providing advice to John on this matter?

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# IS A SMSF A FINANCIAL PRODUCT?

How many financial products are considered in providing advice to John on this matter?

1. The SMSF itself
2. John's contributions to his accumulation account
3. Sarah's contributions to her accumulation account
4. John's (proposed) Transition to Retirement Income Stream
5. Investment Strategy .. Care here SMSF is already open



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# QUIZ TIME

- Go online
- Take the Module 3 Assessment
- Ask us if you have any queries
- You will have TWO opportunities to take the quiz

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