

So you want to be a Director of the Trustee?

April 2023



Being a Trustee Director of a superannuation scheme is a responsible position. This brochure provides a brief explanation of what it means to be a Trustee Director. The information is only a guide and is not intended to provide comprehensive advice. You should not act on the basis of this information alone without considering and, where necessary, seeking further advice on your own particular circumstances.

TRUSTEE DIRECTORS' ROLE

A Trustee Director is responsible for overseeing the operation of ANZ Staff Super. Trustee Directors can take advice and use the services of outside professionals, but the ultimate legal and decision-making responsibilities rest with them.

Member Representative Directors are not paid for undertaking the role.

Trustee Directors must act solely in the interests of all members and ensure ANZ Staff Super operates in accordance with its Trust Deed and the relevant law.

The Trust Deed and Rules is the governing legal document. It sets out the obligations that a Trustee Director has towards the members, and the duties and powers of the Trustee. The members and the employer sponsor are also bound by the provisions of the Trust Deed.

APRA has an operating standard in relation to fitness and propriety which Trustees are required to meet. As part of these requirements, candidates for the position of Member Representative Director are required to:

- complete the "Declaration to Act as a Director of the Trustee" on the nomination form; and
- consent to a police and other fitness and propriety checks.

You may also be asked to provide verification of qualifications, experience and training details you provide in the attachment to the nomination form.

If you are elected, you will be expected to complete certain training (detailed below).

THE TRUSTEE OF THE SCHEME IS RESPONSIBLE FOR:

- compliance with the terms of the Trust Deed and Rules;
- ensuring members' rights are protected;
- the payment of benefits to members;
- investment of the assets of the ANZ Staff Super;

- ensuring that the Scheme complies with legislative and regulatory requirements (including the *Corporations Act 2001* which covers disclosure requirements and the *Superannuation Industry (Supervision) Act 1993* which includes licensing and registration requirements for Trustees and superannuation schemes); and
- considering applications for total and permanent disablement benefits and payment of death benefits.

The Directors of the Trustee Board are assisted in carrying out their responsibilities by ANZ Group Superannuation, the Company Secretary's Office, solicitors, actuaries, investment consultants, investment managers, auditors and the administrator.

ANZ Group Superannuation has been delegated certain functions and supports the Trustee by overseeing member communication and education, governance and compliance, risk management, investments and statutory requirements.

ACT IMPARTIALLY AND IN THE BEST INTERESTS OF MEMBERS

The prime duty of a Trustee Director is to act in the best interests of the members and their dependants.

Trustee Directors cannot let the interests of the employer or a certain group of members affect their judgement. All are equal when performing the duties of a Trustee Director.

The Trustee is also required to identify potential and actual conflicts of interest and ensure that they are avoided or prudently managed.

CONSIDER DECISIONS PROPERLY

Trustee Directors must act in good faith when making decisions or exercising a discretion (such as deciding who receives a benefit when a member dies).

Trustee Directors must also exercise reasonable skill and care. They cannot allow personal opinions to override ordinary standards set by the community. They must act in a prudent manner.

ACT ACCORDING TO THE GOVERNING RULES

Trustee Directors need to be familiar with what is contained in the Trust Deed and Rules. They must also act according to these rules and can only perform actions or make decisions where the document gives them the power to do so.

HAVE REGARD FOR LEGISLATION

Apart from the governing rules, Trustee Directors also need to consider government legislation that may have an impact on their decisions. However, they may obtain advice if they are unsure of an issue.

ATTEND MEETINGS

Member Representative Directors attend meetings held, as required, at 833 Collins Street, Melbourne. There are usually seven Board meetings each year, but additional meetings may be scheduled if necessary.

Trustee Directors should make themselves available to attend these meetings. Trustee Directors are responsible for the decisions that are made at Trustee Director meetings and should actively participate in any decisions. Agreed travelling expenses will be covered.

The Trustee utilises the collective skills and experience of its Directors to efficiently and soundly manage and monitor the operations and performance of ANZ Staff Super.

Member Representative Directors will also join at least one of the three committees of the Trustee. Committee meetings are also held on a regular basis and Trustee Directors must make themselves available to attend these meetings. As Committee meetings are typically of shorter duration than Board meetings, they may be conducted by teleconference.

BE PREPARED TO BE EDUCATED

Trustee Directors are expected to:

- complete Directors' training;
- complete an introductory course on superannuation trusteeship; and
- undertake training to meet the Australian Securities and Investment Commission RG146 requirements under the *Corporations Act 2001* in respect of superannuation (if they have not already done so).

ENSURE PROPER RECORDS ARE KEPT

The Trustee Directors should ensure that proper records are kept regarding their meetings and decisions that are made. Details of each meeting are recorded in the minutes and legislation requires some records to be kept for at least 10 years. The Company Secretary's Office provides assistance in ensuring proper records are kept.

They should also ensure that the activities of the Trustee (such as meetings and records) are separate from those of any other body (such as the employer or a union).

KEEP MEMBERS INFORMED

The Trustee Directors need to ensure that they keep their members informed about the operation of ANZ Staff Super and the benefits being provided. They must also ensure that procedures are in place to give members access to certain information if they have an enquiry.

LIABILITY

Trustee Directors must act personally and are personally liable for their actions. They can be held accountable for any breaches of duty, negligence or failure to act in a responsible manner.

Laws stipulate significant penalties for major breaches of duty. However, these are only likely to be imposed for the most serious or wilful breaches.

Some protection is provided through trust and superannuation legislation. ANZ Staff Super has taken out trustee indemnity insurance that protects its Trustee Directors from loss in some circumstances.

If Trustee Directors act honestly, in good faith and for a proper purpose, it is unlikely that their actions will ever be called into question.

KNOWLEDGE OF SUPERANNUATION

Although Trustee Directors can use outside professionals to advise them on most issues, they should make sure that they remain up to date on major superannuation developments.

NOT EVERYONE CAN BE A TRUSTEE

The *Superannuation Industry (Supervision) (SIS)* legislation prohibits certain people from acting as Directors of a Trustee. A person is considered disqualified from being a candidate and therefore cannot be a Trustee Director if they have:

- been convicted of an act of dishonesty (and APRA has not waived this status);
- had a Civil Penalty Order made against them under the SIS Act;
- been disqualified by the Australian Prudential Regulation Authority (APRA) or previous regulator;
- become an insolvent under administration; or
- become ineligible to manage a corporation under the *Corporations Act 2001*.

Members nominated for the position of Member Representative Director will be asked to sign a declaration confirming their eligibility. If elected, they will be required to immediately advise the Secretary of the Trustee should any of the above disqualification criteria apply.

Member Representative Directors may be removed in the following circumstances:

- death;
- mental or physical incapacity;
- retirement as Trustee Director;
- disqualification from acting as a Trustee Director;
- suspension or removal by APRA;
- no longer meet fitness and propriety standards;
- completion of the term of office;
- ceasing to be a member; or
- resignation from the office of Trustee Director.

SHOULD I BE A TRUSTEE DIRECTOR?

You should not be dissuaded from being a Trustee Director. However, if you are considering being nominated for the position, you need to be prepared to take your responsibilities seriously. All Trustee Directors are equally responsible for the proper management of ANZ Staff Super and they must act according to their responsibilities, no matter what their background is.

AS A TRUSTEE DIRECTOR YOU WILL NEED TO (AMONGST OTHER THINGS):

- act with skill, care and diligence;
- act honestly and fairly;
- know and acknowledge your duties;
- manage any potential or actual conflicts prudently;
- act in the best interests of members and their dependants;
- not delegate responsibility;
- keep ANZ Staff Super assets separate;
- ensure ANZ Staff Super operates according to the governing rules, and relevant legislation and regulations;
- formulate, regularly review and give effect to a range of strategies covering investments, insurance and risk management;
- consider ANZ Staff Super's characteristics when making investment decisions; and
- allow members access to information.

Trustee Directors must be prepared to perform their duties and be responsible for their actions. Getting involved and participating in decisions can be very rewarding. Trustee Directors are expected to act in an honest and responsible manner based on the information they have available and to comply with the relevant laws.

If you'd like more information about the responsibilities of being a Trustee Director, please contact ANZ Staff Super on **1800 000 086** or email **anzstaffsuper@superfacts.com** and your query will be referred to the Returning Officer.