

# An offer you can refuse

Legality is all relative in SMSF investment

DIY  
SUPER

Monica Rule



A timeless question from self-manager superannuation fund trustees is whether they can set up an SMSF and use it to run a business.

An SMSF can invest in anything as long as it complies with the superannuation law. One area of the law that covers investment is the sole purpose test. This test stipulates that the purpose of an SMSF must be to provide retirement income for members or death benefits for the members' dependants.

Any investment that provides the members with an immediate benefit, to which they are not entitled, contravenes the superannuation law.

So, would an SMSF running a business, contravene the law?

Yes, it would. If an SMSF is operating a business to generate non-superannuation income such as salary or wage income, it is funding the day-to-day financial needs of its members so it fails the sole purpose test. An SMSF cannot directly run a business.

On the other hand, the law does allow SMSFs to invest in entities that carry on a business. Obviously there is a fine line between investing in a business and using the SMSF to run a business.

For example, if an SMSF is generating employment income for



## ALL IN THE FAMILY

Part 8 of the Superannuation Industry (Supervision) Act creates a wide scope for people and entities being associates of a member of a self-managed superannuation fund (SMSF).

Part 8 Associate is an important bit of jargon in discussing SMSFs and has to be read differently to associate as defined under tax law.

### A PART 8 ASSOCIATE OF AN SMSF MEMBER INCLUDES:

- A relative of the member.
- Other members of the SMSF.
- Other directors of an SMSF's corporate trustee.
- A second trustee of single member SMSFs.
- A business partner of the member as well as any spouse or children of the business partner.
- A trustee of a trust where the member controls the trust.
- A company controlled by the member and/or their Part 8 associates.

The definition of controlling a company goes well beyond a member controlling the vote at an annual meeting. It includes where

the company, or its board, might reasonably be expected to act in line with the wishes or directions of a member.

Part 8 also has a broad definition of partners. It can include having a joint bank account, jointly investing in property in addition to traditional notions of business partnership.

members then it is operating a business. Whereas, if it purchased shares in a company to generate investment income for its members' retirement, then the investment is acceptable as it is seen as a normal investment.

What this means is if an SMSF member operates a business under either a company structure or a unit trust structure, their SMSF would be able to invest in the company or the trust entity.

However, the superannuation law does restrict related-party investments to 5 per cent of the total value of assets in the SMSF. For example, if an SMSF's assets are valued at \$500,000, then the SMSF can invest up to \$25,000 in a member's company that carries on a business.

However, if the member's business is operated under an "unrelated" company structure where the member owns 50 per cent or less of the company, then their SMSF is

not restricted in how much it can invest.

The member will need to make sure that they do not have any control over the company. This is because the related-entity rules under superannuation laws apply to a company in which a majority voting interest is held by the SMSF member and/or their associates.

Also, if an SMSF member decides to establish their business under an "unrelated unit trust" structure, they will need to make sure they do not have any control over the trust.

An SMSF member controls a trust if they and/or any of their associates under super law have a fixed entitlement to more than 50 per cent of the capital of the trust, or they are able to direct the trustee to act in accordance with their wishes or are able to appoint or remove the trustee.

If you are thinking of establishing an unrelated entity with other

people, it needs to be genuine and you must not control the entity.

An Australian Taxation Office audit conducted in 2011-12 on the R Ali Superannuation Fund found the SMSF member established a purportedly unrelated company with another person.

The tax office investigation found that the co-director was only appointed to create an appearance of independence and did not have any input into the management of the company. As a result, the investment by the SMSF into the company was found by the Administrative Appeals Tribunal to contravene super law.

SMSFs cannot run a business. While they may invest in a member's business, great care must be taken not to contravene the law.

**Monica Rule is an SMSF Specialist and author [www.monicarule.com.au](http://www.monicarule.com.au). The Ali ruling can be accessed on the internet through the address [bit.ly/monalidly](http://bit.ly/monalidly)**



**THERE IS A FINE LINE BETWEEN INVESTING IN A BUSINESS AND USING THE SMSF TO RUN A BUSINESS.**

# AusNet readies to power up on solid dividend

YIELDHUNTER

with Patrick Taylor



With the all ordinaries index breaking support at 5000 and short-term signalling flashing red across the general market, we are happy being conservative and defensive with our first Yield Hunter pick of 2016.

This has us focusing our sights on AusNet, the electrical utility company that brings with it a strong income stream, stable earnings outlook as well as some medium to long-term scope for capital growth.

AusNet is a diversified energy transmitter and distributor based in Victoria and brings with a hefty 5.8 per cent dividend, already covering the majority of the required total return target of 8.7 per cent.

The remaining 2.9 per cent we are looking to come from capital growth and we are confident that

## AUSNET SERVICES AST

Date of data capture: 3/2/2016

Classification: Electric utilities

Current price: \$1.465

Market capitalisation: \$5.25b

Forecast EBITDA growth: 7.5%

Gross yield: 5.83%

Consensus price target: \$1.48

Covering analysts: 14

Discount at current price: 1%

Price target trend: Increasing

Signal time frame: Long (Monthly) medium (Weekly)

Trend bias: Up flat (Monthly) (Weekly)

### INDICATORS

Short-term: Neutral

negative

Medium-term:

Positive

Long-term: Positive

Neutral

Recommendation:

Buy

### SETUP NOTES:

■ AST continues to grind against long-term resistance at \$1.50, if this ceiling breaks we can expect a good upward bounce straight afterwards.

■ AST signalling is negative along with the general market - we will look to buy into strength and good targets are \$1.45 and \$1.40 if you are lucky or courageous.

■ Very good correlation with the medium-term weekly timeframe which has only just turned positive in the last two weeks and should combine well with positive long-term momentum.

we can get it. AusNet currently shows a one per cent discount to the consensus target price given by the 14 analysts covering the stock.

We can see that the general disposition to the stock has markedly improved over the past few months, with no negative forecasts being given. We have a price-target trend that is increasing again.

So even if the current forecasts aren't that exciting we can afford to

sit back on a strong dividend and wait to see if AusNet gets back to its usual trick of running ahead of targets when advancing in front of rising price expectations.

A quick view of the price history of AusNet reveals a steady and strong capital gain progression from the exit of the GFC into 2009 at 75¢ and basically doubling to its price now.

With AusNet sitting just beneath



**WE HAVE A FULL YEAR OF PENT-UP POTENTIAL.**

its 2007 pre-GFC peak of \$1.50, we can see that the stock has struggled to shake off some last vestiges of superstition and break to new highs.

On the other hand, we have a full year of pent-up potential in the price and should the ceiling, at \$1.50, break we can expect to see some of that unwind to the upside.

The recent general market weakness over the past year has tested the strength of the uptrend a number of times, most recently in November when, once again, it rallied out of weakness with renewed strength.

In a time of general weakness in the market we will continue to follow strength of trend and income. AusNet satisfies that with electrifying price performance, strong yield and stable outlook.

While we are expecting further challenges from the market this year, with AusNet we think we have found a good yield stock worth hunting for and we aim to take advantage of this opportunity.