SuperConcepts

Business Real Property (BRP) and SMSFs

A practical factsheet for Australian business owners

Simplifying SMSF, so more Australians can control their super

September 2026

Can your SMSF buy your business premises?

Introduction

Many business owners operate from commercial premises under a lease agreement such as offices, warehouses, factories, medical suites or retail premises.

Where commercial property is leased from a third party, the business will typically pay rent over many years as part of its ongoing operating costs.

As a result, business owners commonly ask whether a **Self-Managed Super Fund (SMSF)** can acquire the premises from which the business operates.

An SMSF is a private superannuation fund established for the purpose of providing retirement benefits to its members. Unlike larger super funds, the members are generally responsible for acting as trustees and making investment decisions on behalf of the fund.

These scenarios commonly involve a related party, such as a company, trust or partnership associated with SMSF members. Under the SIS legislation, related-party rules extend beyond individual members and can include entities controlled by members and their associates.

In certain circumstances, an SMSF may be permitted to acquire and hold commercial property used in a business. However, strict legislative requirements apply, and not all property will qualify. This may involve acquiring premises from a related party, acquiring premises from an unrelated vendor and leasing them to a related business, or transferring an existing property into the SMSF as an in-specie contribution.

This factsheet covers:

- when an SMSF may acquire business premises
- what qualifies as Business Real Property (BRP)
- leasing arrangements involving related parties
- market value requirements
- common compliance considerations.

Real property vs Business Real Property

Understanding the difference between real property and Business Real Property (BRP) is important when considering whether you can use your super to acquire property.

In most circumstances, an SMSF cannot acquire real property from a related party. However, an exception may apply where the property satisfies the definition of Business Real Property and is acquired at market value.

Real property generally refers to land held under a legal title, together with buildings, structures and other fixtures that form part of that land.

Business Real Property is a specific category of real property that is used **wholly and exclusively in one or more businesses**. To qualify, the property must satisfy the business use test, with the underlying use of the land being the primary consideration.

A property that meets the BRP requirements may be acquired by an SMSF from a related party, provided all relevant legislative requirements are satisfied and the transaction occurs at market value.

Leasing to a related party

In addition, property leased to a related party generally requires careful consideration. Residential property cannot typically be leased to a related party, whereas qualifying Business Real Property may be leased to a related party provided the arrangement is conducted on arm's length terms.

The following table provides a high-level comparison:

Aspect	Real property	Business Real Property
Definition	Land and fixtures held under legal title	Real property used wholly and exclusively in one or more businesses
Acquisition from a related party	Generally prohibited unless a legislative exception applies	May be acquired at market value where legislative requirements are met
Leasing to a related party	Generally not permitted	May be leased on arm's length terms
Primary use	May include residential rental property	Must be wholly and exclusively used in a business

What type of property qualifies?

The following examples provide a general indication only:

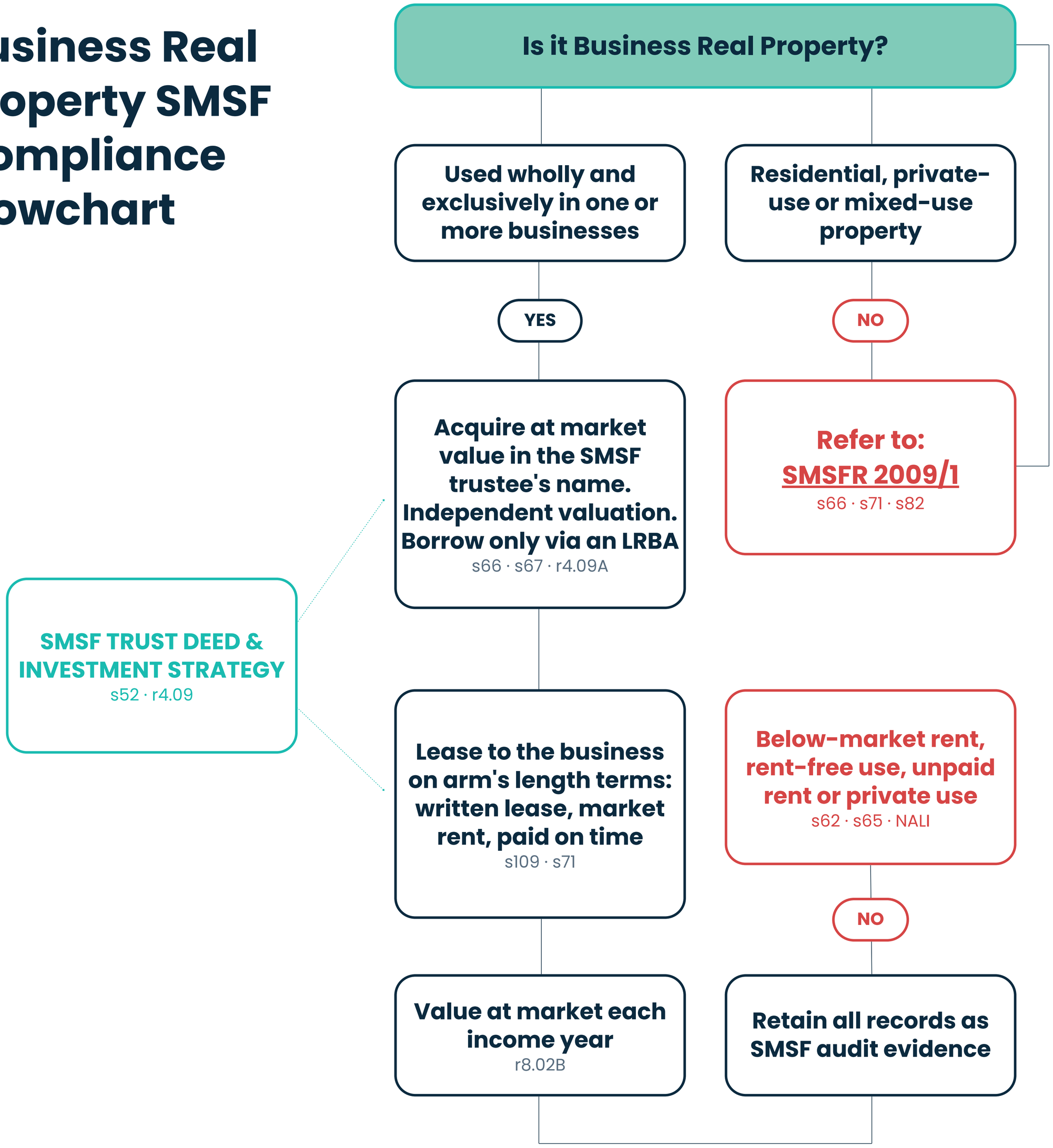
Property type	Indicative outcome
Warehouse	**May qualify**
Factory	**May qualify**
Commercial office	**May qualify**
Medical consulting rooms	**May qualify**
Retail premises	**May qualify**
Primary production property	**May qualify**
Mixed-use premises	**Further review required**
Home office	**Generally does not qualify**
Residential investment property	**Generally does not qualify**

TIP: Where commercial property is acquired jointly, trustees should ensure ownership interests are clearly documented and that any borrowing, mortgage or security arrangement does not inadvertently affect the SMSF's interest in the property.

Business Real Property compliance

The flowchart summarises the main decision points for trustees. The section references in each box match the SIS compliance checklist on the following page.

Business Real Property SMSF Compliance Flowchart



Business Real Property SIS compliance checklist

The Superannuation Industry (Supervision) Act 1993 (SIS Act) and the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) establish the regulatory framework governing SMSFs.

SIS section or regulation	Requirement	Compliance breach
s52B	Trustees must exercise powers in accordance with the trust deed and governing rules.	The trustee acquires commercial property where the trust deed does not permit direct property investment or the arrangement is inconsistent with the deed.
r4.09	The investment strategy must consider risk, liquidity, diversification, cash flow and member circumstances.	The fund acquires a warehouse or factory representing most of the fund's assets without documenting why the investment remains appropriate for the SMSF.
r4.09A	Fund assets must be kept separate from members' personal assets.	The commercial property is registered in a member's personal name rather than the SMSF trustee's name.
s62	The fund must be maintained solely for providing retirement benefits.	The property is used by members for private purposes or provides a current-day benefit to members outside an arm's length business arrangement.
s66	Acquisition of assets from a related party is prohibited unless an exception applies.	The SMSF acquires property from a member that does not satisfy the Business Real Property definition or is acquired below market value. The BRP exception is contained within s66.
s71	Related-party assets may become in-house assets unless an exemption applies.	Property leased to a related party does not qualify as BRP and becomes an in-house asset potentially exceeding the 5% threshold.
s82	In-house assets must not exceed 5% of total fund assets.	A property fails the BRP requirements and causes the fund's in-house asset ratio to exceed 5%.
s109	Investments must be made and maintained on arm's length terms.	The lease has below-market rent, no lease agreement, rent holidays, or other terms that would not exist between unrelated parties.
s65	Lending money or providing financial assistance to members or relatives is prohibited.	The SMSF pays expenses that should be paid by the tenant business or allows the business to occupy the premises rent-free.
s67	Borrowing is generally prohibited except under specific limited recourse borrowing arrangements (LRBAs).	The fund enters into an arrangement that gives rise to an unauthorised borrowing in connection with acquiring the property.
r13.14	A trustee must not give a charge over fund assets.	The fund uses an existing SMSF-owned property as security for a separate borrowing.
r8.02B	Trustees must value assets at market value each income year.	The trustee cannot substantiate the market value of the commercial property at year end using objective and supportable evidence.
NALI considerations	Transactions should occur on commercial terms.	Property is acquired below market value or leased on non-commercial terms, potentially resulting in non-arm's length income consequences.

Business Real Property audit evidence matrix

What an SMSF auditor may ask for, depending on whether the property was acquired during the year or is an existing holding.

Audit evidence	Property acquired during year	Existing property held by SMSF
Proof of ownership	• Executed contract of sale • Settlement statement • Transfer documents	• Current title search • Property ownership records
Business Real Property status	• Evidence of business use at acquisition date • Lease agreement (where applicable) • Supporting documents demonstrating business activity	• Current lease agreement • Evidence property continues to be used in a business • Documentation supporting ongoing BRP status
Market value	***Non-negotiable*** • Independent valuation, appraisal or objective market evidence obtained near acquisition date, if related party purchase	• Independent valuation **OR** • Objective and supportable market value evidence as at 30 June
Related party acquisition	• Documentation demonstrating compliance with s66 SIS Act • Evidence property qualifies as BRP • Contract and transfer documentation	***N/A unless ownership structure changes during the year***
Lease arrangement	• Executed lease agreement • Evidence rent reflects market value	• Current lease agreement • Market rent review evidence (where applicable) • Lease variation documents
Rental income	• Rent receipts • Bank statement evidence • Tenant ledger (if maintained)	• Full year rental income records • Bank statements showing rent received
Outgoings & expenses	• Council rates • Insurance • Property expenses paid by correct party under lease	• Evidence lease obligations have been applied correctly • Outgoings supported by invoices and payments
Related party tenant	• Documentation identifying relationship between tenant and SMSF members	• Ongoing evidence lease remains on arm's length terms
Co-ownership arrangements	• Tenants in common documentation • Ownership percentage records • Co-owner agreements (if applicable)	• Evidence SMSF ownership percentage remains unchanged • Records supporting income and expense allocations
Trustee declaration	Signed trustee confirmation that: • Property is held by the fund • Property qualifies as BRP • Market value has been reviewed • Related-party dealings are conducted on arm's length terms	Signed annually confirming: • Continued business use • Accuracy of property valuation • Related-party lease remains commercial

Additional considerations

Existing business premises

Some trustees already own their business premises personally or through another structure and may consider transferring the property into the SMSF as an in-specie contribution.

Trustees should carefully consider:

- contribution cap implications
- market value requirements
- potential capital gains tax consequences
- transfer duty considerations
- documentation requirements

Where a property is transferred partly as a sale and partly as a contribution, additional complexity may arise.

Tax and transaction costs

In addition to the SMSF compliance requirements, trustees should consider the taxation and transaction costs that may arise when acquiring, transferring or holding Business Real Property within an SMSF.

These may include:

- capital gains tax arising from a transfer of ownership
- small business CGT concession eligibility
- transfer duty
- GST implications
- land tax obligations
- contribution cap impacts for in-specie transfers

Trustees should obtain appropriate tax advice before undertaking a property transaction.

Ongoing trustee obligations

Once Business Real Property is held within an SMSF, trustees should continue to:

- collect rent in accordance with the lease agreement
- review rental terms where appropriate
- ensure lease provisions are enforced on commercial terms
- maintain appropriate insurance
- retain valuation evidence
- address GST obligations where required
- document trustee decisions and reviews

Arrangements should be managed as they would be between unrelated parties.

INSIGHT
Trustees should consider not only whether the property qualifies as Business Real Property, but also how the property will be valued, leased, maintained and administered over time.

Compliance issues can arise after acquisition due to inadequate documentation, market value evidence or lease management.

Planning for the ongoing ownership of the property can be just as important as the acquisition itself.

Business premises checklist

Work through these questions before committing the fund to a purchase.

Property qualification

- [ ] Is the property used wholly and exclusively in a business?
- [ ] Does the property meet the definition of Business Real Property?
- [ ] Is any part of the property used for residential, private or personal purposes?
- [ ] Is the property currently being used in a business, rather than intended to be used in a business at a future date?

Transaction requirements

- [ ] Is the asset being acquired from a related party?
- [ ] Has an independent valuation been obtained where appropriate?
- [ ] Will the acquisition occur at market value?
- [ ] Have capital gains tax, transfer duty and GST consequences been assessed?
- [ ] If the acquisition involves a part-sale/part-contribution arrangement, has the structure been reviewed by an adviser?

Trustee considerations

- [ ] Has appropriate professional advice been obtained?
- [ ] Does the trustee understand the ongoing obligations associated with owning commercial property through an SMSF?

Leasing considerations

- [ ] Will the property be leased to a related party?
- [ ] Is a formal lease agreement in place?
- [ ] Will market rent be charged?
- [ ] Will the arrangement operate on arm's length terms?

SMSF compliance considerations

- [ ] Has the investment strategy been reviewed?
- [ ] Does the fund have sufficient liquidity following the acquisition?
- [ ] Will the property result in any borrowing or security arrangements?
- [ ] Have any in-house asset implications been considered?
- [ ] Have potential NALI consequences been considered?

Need help assessing your property?

Business Real Property can involve complex considerations.
SuperConcepts offers technical consultations to assist trustees, advisers and accountants in navigating complex SMSF property issues.

Contact the Technical Services Team to discuss the legislative and compliance considerations relevant to your proposed transaction

CONTACT US

Professional support

SuperConcepts provides the support you need to run your SMSF. We take away the burden of paperwork and let you focus on the important job of investing and making preparations for the retirement you want.

We'll help you get set up

We'll help you establish your SMSF, organise government registrations and set up investment providers. Our expert assistance is only a phone call or email away.

keep you up to date

You'll have 24/7 access to your SMSF information to help you focus on the investment strategy and we will alert you when there are things you need to do.

and take care of the paperwork

We reconcile your accounts and investments transactions and take care of the paperwork, tax returns and compliance reporting that is required for an SMSF.

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Disclaimer: this information is general in nature and does not constitute financial product advice. Trustees should obtain financial, taxation and legal advice before implementing any property transaction.