



23 October 2026

Australian National Audit Office
GPO Box 707
Canberra ACT 2601
AUSTRALIA

BY ELECTRONIC LODGEMENT

Dear Sir/Madam,

**SMSF ASSOCIATION SUBMISSION – PERFORMANCE AUDIT: AUSTRALIAN TAXATION OFFICE'S
REGULATION OF SELF-MANAGED SUPERANNUATION FUNDS**

The SMSF Association welcomes the opportunity to contribute to the Australian National Audit Office's performance audit of the Australian Taxation Office's regulation of self-managed superannuation funds (SMSFs). The audit is timely. Since the ANAO last examined SMSF regulation in 2007, the sector has grown substantially, now representing more than \$1 trillion in retirement savings. The regulatory framework must therefore be robust and trusted. We recognise that the regulatory environment has become more complex and the ATO's role has evolved from a largely educative model to a more active regulatory model.

For the ATO, the practical challenge is the identification and response to genuine misconduct without imposing unnecessary delay, uncertainty or administrative burden on compliant funds. Our submission does not suggest that the ATO should be less active in responding to genuine misconduct. Rather, we consider the audit should test whether the ATO's administration is sufficiently risk-based, proportionate, transparent and timely, and whether its compliance tools distinguish serious or deliberate non-compliance from administrative failure, inadvertent error and issues that can be efficiently rectified.

We also recognise that the ANAO does not assess the merits of government policy. Consistent with the audit's mandate, our comments focus on the administration of the existing regulatory framework, with a focus on risk identification and differentiation, public advice and guidance, compliance monitoring and reporting, the use of auditors as an integrity channel, and the investigation and sanctioning of non-compliance.

We support a strong regulatory framework that must be firm where it needs to be, practical in its administration, clear about the limits of the ATO's role, and supportive of trustees and professionals who are committed to doing the right thing.

If you have any questions about our submission, please do not hesitate to contact Tracey Scotchbrook, Head of Policy and Advocacy via email traceyscotchbrook@smsfassociation.com



We thank you again for the opportunity to put forward this submission.

Yours sincerely,

Peter Burgess

Peter Burgess
Chief Executive Officer

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.2 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.



Australian Taxation Office Regulation of Self Managed Superannuation Funds (SMSF)

October 2026

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Executive Summary

The SMSF Association supports strong, credible regulation of the SMSF sector. Effective regulation protects retirement savings, supports confidence in the sector and ensures that trustees who deliberately misuse the system are dealt with appropriately. At the same time, regulation is most effective when the regulator targets its resources to the seriousness of the underlying risk and gives compliant trustees and professionals clear, timely and authoritative pathways to comply.

The issues raised by our members and reflected in this submission point to a recurring administrative theme. The ATO has significant data, powers and compliance tools, but the framework does not always distinguish adequately between deliberate misconduct, substantive contraventions, administrative failure and inadvertent error. This can produce two opposite risks at once - disproportionate consequences for relatively low-risk conduct, while serious cases or recurring structural gaps may not receive a sufficiently timely response.

We also see a related guidance problem. The ATO increasingly uses non-binding web content and taxpayer-specific advice to communicate important positions, while several SMSF-specific rulings are now aged and outdated, some significant draft guidance has remained unresolved for years, and the sector no longer has a technical consultation forum equivalent to the former NTLG Superannuation Technical Sub-committee. The result is avoidable uncertainty for trustees, advisers and auditors, and avoidable compliance risk for the ATO itself.

Summary of Recommendations

1. We encourage the ANAO to examine whether sufficient safeguards exist to prevent compliance oversight evolving into de facto prudential supervision.
2. The ANAO previously examined the accuracy of ATO SMSF sector reporting in its 2006–07 audit. We encourage the ANAO to assess the merits of the ATO calculating and publishing an annual ROA figure for the SMSF sector. Differences in calculation methodologies, compared to the APRA fund sector, means the ATO's calculation is of little relevance, and there is a material risk the comparative performance of the SMSF sector, and the APRA fund sector is misconstrued.
3. The ANAO should test whether the ATO's risk and guidance processes distinguish deliberate value-shifting arrangements from immaterial or inadvertent shortfalls, and whether the ATO has appropriately considered proportionality concerns raised through consultation when finalising relevant public rulings.
4. The ANAO should examine whether the ATO's finalised position in TR 2010/1 on in-specie contribution shortfalls reflects a proportionate compliance and tax outcome, having regard to industry's sustained, substantive objections during consultation, and whether the ATO's process for finalising public rulings adequately weighs proportionality concerns raised by industry against a strict, non-discretionary application of the NALE provisions.
5. The ANAO should examine whether the ATO's process for changing a long-standing position that it had also published as web guidance was appropriate, including its assessment of the impact on stakeholders who relied on that guidance.

6. The ANAO should examine the ATO's criteria for prioritising and reprioritising draft public advice and why guidance on a risk it treats as significant has remained on hold for an extended period with no published timeframe for finalisation.
7. The ANAO should review the effectiveness, transparency and timeliness of the ATO's establishment risk checks, including whether risk indicators are appropriately targeted, whether legitimate applications are resolved promptly, and whether trustees and professionals have clear escalation channels when an establishment is delayed.
8. The ANAO should examine why available data and reporting on risk check classifications, actions and outcomes are not made publicly available.
9. The ANAO should examine whether the two-week Super Fund Lookup response appropriately distinguishes lateness as an administrative failure from evidence of substantive regulatory risk, and whether the operational consequences remain proportionate as contribution frequency increases.
10. The ATO should demonstrate to the ANAO how non-lodgement is weighted with other indicators in its risk models and how its processes avoid collapsing an administrative failure into a presumption of fraud or illegal early access.
11. The ATO should demonstrate to the ANAO how low superannuation balances are weighted with other indicators in its risk models and how its processes avoid collapsing an administrative failure into a presumption of fraud or illegal early access.
12. The ANAO should consider whether ATO contribution-processing systems contain appropriate controls and safeguards that prevent immaterial rounding or cents-level differences from producing disproportionate excess-contribution consequences.
13. The ANAO should examine the accessibility, timeliness and consistency of remediation, and consider recommending a published administrative approach within the Commissioner's lawful powers. Where legislative constraints prevent an effective solution, the ATO should identify and refer them to Treasury.
14. The ANAO should assess whether the ATO adequately explains its SMSF risk-differentiation and compliance-response principles, and consider recommending a consolidated public framework covering education, review, audit and enforcement. The framework should explain the factors informing different responses without compromising operational intelligence.
15. The ANAO should examine whether the ATO's administration of SIS Act advice provides adequate transparency, consistency and certainty, particularly for high-consequence transactions. This should include how reliance is recognised in compliance decisions, how changes in advice are managed, and whether limitations requiring legislative consideration have been identified and referred to Treasury.

16. The ANAO should examine whether discontinuing ATO IDs adequately addressed the advice needs of SMSF trustees and practitioners, whether current products replace their practical interpretative function, and whether the ATO consistently implements its requirements for reviewing, maintaining and replacing legacy decisions.
17. The ANAO should examine whether the ATO systematically assesses and maintains the currency of SMSF rulings and Regulator's Bulletins. It should consider recommending a published, risk-based review program prioritising legislative change, materiality, emerging arrangements and recurring industry uncertainty, with indicative timeframes and reporting on progress.
18. The ANAO should examine whether the current consultation architecture provide an effective, accountable mechanism to identify, prioritise and resolve significant superannuation technical and administrative issues. It should consider recommending a dedicated technical forum or equivalent process with clear responsibilities, prioritisation criteria, indicative timeframes and communicated outcomes.
19. The ATO should adopt formal governance standards for SMSF web guidance, including visible version histories for material changes, clear withdrawn/superseded markers, accessible archives, criteria for when an issue warrants a ruling or determination rather than web guidance alone, and adequate lead time for major legislative changes.
20. The ANAO should examine whether the ATO adequately documents and communicates the legal basis, limits and reliance safeguards of significant administrative concessions. For minimum pension shortfalls, it should consider recommending an enduring public explanation of the concession's authority and self-assessment conditions, supported by transparent change control.
21. The ANAO should examine whether the ATO systematically identifies recurring private-ruling issues, investigates apparent inconsistent outcomes and prioritises sector-wide public guidance.
22. The ANAO should examine whether the ATO's advice processes identify recurring private-ruling questions, investigate apparently inconsistent reasoning and prioritise public advice explaining the decisive factual and legal distinctions.
23. The ANAO should examine the internal controls that compare draft and final public advice products and ensure material changes in interpretation are exposed for consultation, accompanied by appropriate prospective or transitional treatment where stakeholders could reasonably have relied on the prior ATO view.
24. The ANAO should examine whether the ATO has adequately assessed the compliance burden of post-pension-failure component calculations and considered lawful simplification options. Where legislative constraints prevent an effective administrative solution, the ATO should identify and refer them to Treasury.
25. The ANAO should examine whether the ATO's reliance on approved SMSF auditors is appropriately balanced with timely regulatory follow-up, clear guidance, meaningful feedback

and accountability for trustees and other participants whose conduct gives rise to the compliance issue.

26. The ATO should publish aggregate ACR outcome information and provide auditors with proportionate feedback mechanisms, including examples of reporting that is useful, unnecessary or commonly misunderstood, while respecting taxpayer secrecy and operational constraints.
27. The ANAO should examine how the ATO distinguishes documentary/administrative findings from substantive integrity risks when analysing ACR data, selecting compliance cases and reporting on SMSF non-compliance.
28. The ATO should periodically review ACR financial thresholds and tests, with industry consultation, to ensure they remain material, risk-based and fit for purpose. The review should consider whether different categories of contravention warrant different materiality treatment rather than relying on a single fixed threshold.
29. The ANAO should assess whether the ATO's use of administrative penalties, rectification directions and education directions is proportionate, consistently applied and demonstrably linked to behaviour and risk. The review should include whether fixed penalty settings have become disproportionate as penalty-unit values have risen.
30. The ATO should provide a standing, publicly accessible explanation of its risk-tiering criteria for compliance escalation decisions (education vs penalty vs disqualification vs prosecution), reviewed and updated periodically.
31. The ANAO should test whether the ATO's administration of trustee education has been timely, accessible and aligned with the statutory framework's original design.
32. The ANAO should test whether education directions are being used consistently for knowledge-based contraventions, whether they are unnecessarily combined with financial sanctions, and whether approved trustee education is accessible, clearly signposted and aligned with the statutory design.
33. The ANAO should examine whether the ATO provides a clear, workable and timely administrative pathway for single-member SMSFs following trustee disqualification, including coordination with other agencies and guidance on how the fund can lawfully, and efficiently exit or restructure.
34. The ANAO should examine whether the ATO's current administrative practice on revoked disqualifications reflects a considered, proportionate policy position or an administrative default.
35. The ATO should have and publish a clear policy for how revoked disqualifications are presented in its public register, including whether the original entry is removed, annotated or otherwise linked to the revocation so that the register does not create a misleading impression about current status.



36. The ANAO should examine whether the ATO and ASIC have adequate cross-notification and case-management arrangements for SMSFs whose corporate trustee is at risk of, or has undergone, deregistration, and whether a coordinated administrative or legislative solution is required.
37. The ANAO should examine why this issue, acknowledged internally by the ATO as a longstanding and recurring compliance gap, has not resulted in an administrative or legislative solution. The ANAO should consider recommending that the ATO work with Treasury and ASIC to develop a coordinated framework — potentially including earlier cross-notification between ASIC and the ATO before deregistration takes effect.
38. The ANAO should test the timeliness of ATO triage and escalation where serious contraventions are disclosed through annual returns, voluntary disclosure or ACRs, including whether there are service standards or internal controls to prevent high-risk matters remaining unresolved while low-risk administrative actions are automated.

Scope and structure of responses

Where possible, the structure of this submission has sought to adhere to the ANAO's published terms of reference when categorising and presenting our feedback. Due to the nature of material addressed in our submission, a number of our responses will overlap or intersect with more than one element of the terms of reference, and they have necessitated the use of targeted headings and subheadings. We ask that our paper is considered as a whole, and that segments are not examined in isolation.



1. Role of the Australian Taxation Office

1.1 Regulator versus administrator

The Commissioner is the Regulator of SMSFs under the SIS Act, and the ATO treats its SIS Act advice and guidance as part of that role. The same agency also administers the tax and superannuation laws that apply to the same funds, sets compliance priorities and selects the compliance response.

Since 1 July 2014 the Regulator's toolkit has included administrative penalties, rectification directions and education directions. A dual mandate and a broader toolkit make it more important that the ATO can show its powers are exercised in proportion to risk.

1.2 Regulatory versus Prudential Regulation

Unlike APRA, the ATO is not a prudential regulator. The SIS Act provides for supervision by APRA, ASIC and the Commissioner. The ATO's primary function is to ensure trustees meet their compliance obligations.

Our concern is cumulative drift towards functions more commonly associated with a prudential regulator, driven by administrative campaigns and announced Government policy that is not yet legislated.

While recognising the ATO's legitimate compliance responsibilities, regulatory expectations must remain firmly grounded in legislation and respect the distinction between enforcing trustee obligations and directing trustee decisions. Two examples illustrate this concern.

Investment strategy

The ATO's 2019 compliance campaign targeting approximately 17,700 SMSFs with concentrated investments illustrates the risk of regulatory expectations extending beyond statutory obligations.

While SIS regulation 4.09 requires trustees to consider diversification and associated risks, it does not mandate diversification. Yet the ATO's correspondence reportedly referred to a diversification requirement and potential penalties, creating the impression that investment concentration itself constituted non-compliance.

This concern is heightened by the Government's August 2026 announcement requiring written investment strategies upfront and proposing consultation on improving their quality. Assessing the quality of an investment strategy goes beyond verifying compliance and risks drawing the ATO into judging investment decisions reserved for trustees.

SMSF establishment

The Government's announced powers to delay SMSF registration and restrict rollovers pending compliance checks raise similar questions about regulatory boundaries.

While we support effective front-end safeguards (section xxx), any expanded powers must be directed at identifiable compliance risks, not subjective assessments of whether an SMSF is appropriate for an individual. Clear statutory criteria and safeguards are essential to maintaining this distinction.



Recommendation 1

We encourage the ANAO to examine whether sufficient safeguards exist to prevent compliance oversight evolving into de facto prudential supervision.

1.3 Calculation and Publication of Sector Returns

The ATO publishes SMSF investment performance using a return on assets (ROA) methodology that differs from the rate of return (ROR) methodology used by APRA. The ATO itself acknowledges that the measures are not directly comparable.

Independent research commissioned by the SMSF Association from Adelaide University's International Centre for Financial Services has demonstrated the significance of these differences. Its 2022 research found that the ATO's ROA understated SMSF returns relative to a comparable ROR measure. Subsequent research covering more than 400,000 SMSFs continues to demonstrate the importance of consistent methodologies when comparing sector performance.

This concern is heightened by the Government's August 2026 announcement supporting greater visibility for SMSF trustees, particularly those with low balances, of their returns relative to APRA-regulated funds.

While we support transparent, meaningful performance information, comparisons based on inconsistent methodologies risk misleading trustees and informing regulatory or policy decisions on an unreliable basis.

Recommendation 2

The ANAO previously examined the accuracy of ATO SMSF sector reporting in its 2006–07 audit. We encourage the ANAO to assess the merits of the ATO calculating and publishing an annual ROA figure for the SMSF sector. Differences in calculation methodologies, compared to the APRA fund sector, means the ATO's calculation is of little relevance, and there is a material risk the comparative performance of the SMSF sector, and the APRA fund sector is misconstrued.

2. Effective management of SMSF regulatory risks

2.1 Risk differentiation and proportionality

A risk-based regulator should distinguish the seriousness, intent and consequences of different forms of non-compliance. In the SMSF context, a recurring concern is that relatively minor or inadvertent conduct can attract consequences that are substantial and extremely punitive, as they are designed for materially different behaviours, while some serious or repeated risks can remain unresolved for lengthy periods.

The following are examples of risks we have identified.

2.1.1 Non-arm's length income and non-arm's length expenditure

The Association has consistently raised proportionality concerns about the administration of the non-arm's length income (NALI) and non-arm's length expenditure (NALE) rules where the underlying conduct is minor, honest or inadvertent. The statutory settings are ultimately a matter for government. The ANAO issue is narrower: whether the ATO's risk processes and public guidance distinguish deliberate value-shifting arrangements from minor or inadvertent shortfalls when the

ATO develops rulings, explains consequences and selects compliance responses within the limits of the law.

2.1.1A Distinction between deliberate schemes and honest, minor breaches

Our submissions in response to ATO rulings specifically flagged that the current settings could result in a “disproportionate impact on SMSFs due to minor compliance breaches” and called for a practical compliance pathway for “minor and honest and inadvertent oversights”. These concerns remain following finalisation of related subject matter rulings.

Notably, no *de minimis* threshold is applied under the NALI and NALE provisions with no general mechanism by which an inadvertent non-arm's-length transaction can simply be rectified or reimbursed retrospectively to undo the NALI consequences once they have arisen.

For a general non-arm's-length expense, an amount equal to twice the difference between the expense actually incurred and the arm's-length amount is treated as NALI and forms part of the fund's non-arm's-length component taxed at the highest marginal rate, subject to the statutory cap in *Income Tax Assessment Act 1997* (Cth) section 295-545(2A).

Specific NALE has no such limit. On the ATO's view, all income from the relevant assets can be NALI. This includes the tainting of the whole of a capital gain on an asset, including any gains accrued prior to the NALI/NALE event.

Example:

Trustees of a long-compliant SMSF review a related-party limited recourse borrowing arrangement (LRBA) each year against the ATO's benchmarks. They document the calculations, loan schedule and trustee minutes.

One year, the trustees miscalculate the monthly repayments, so the fund pays \$125 a month less than required, a shortfall of \$1,500 over the year.

The market value of the property is \$3,500,000, with \$900,000 owing, a commercial lease of \$195,000 p.a. and an unrealised capital gain of \$1,250,000. The shortfall is approximately 0.04% of the property's value.

The fund's auditor detects the error. The trustees promptly pay the shortfall with interest.

Despite the immaterial error and prompt rectification, all the income derived from the property is classified as NALI and taxed at 45%. The entire capital gain on the sale of the property will also be treated as NALI.

Recommendation 3

The ANAO should test whether the ATO's risk and guidance processes distinguish deliberate value-shifting arrangements from immaterial or inadvertent shortfalls, and whether the ATO has appropriately considered proportionality concerns raised through consultation when finalising relevant public rulings.

2.1.1B Treatment of in-specie contributions

A further example is found in Taxation Ruling TR 2010/1¹ and the treatment of in-specie contributions, including previous reliance on web content with a contrary position.

Finalised on 24 September 2025, TR 2010/1 confirms² where a SMSF purchases an asset under a contract for less than market value, the shortfall is not treated as an in-specie contribution at all, but instead falls wholly within the NALE provisions, tainting all future income derived from that asset as NALI, indefinitely, regardless of the size of the shortfall or the circumstances in which it arose.

This position was adopted notwithstanding sustained industry objection across multiple formal submissions on both draft ruling consultations in response to TR 2010/1DC2 and its companion Law Companion Ruling, LCR 2021/2³. The ruling draws no distinction between a deliberate, engineered undervaluation designed to shift value into a fund and an honest, immaterial shortfall arising from a legitimate part-purchase/part-contribution structure - both attract the same disproportionate consequence of full, indefinite NALI tainting of the asset's income.

This treatment does not align with longstanding industry practice that was well known to the ATO over the Ruling's 15-year history and the market substitution rules which already operated effectively for other income tax purposes. Further, this position was previously held by the Commissioner through the publication of long-standing web content. It was considered a requirement that any shortfall amount was classified as a deemed contribution to the fund and should be recorded in the fund and member accounts accordingly. The risk to members were excess contribution assessments.

The critical question here is not whether the ATO can rewrite the law, but whether its ruling development process adequately considers proportionality, clearly explains the practical consequences of its view and identifies lawful compliance pathways for rectification where they exist. Further, where web content has been used and relied upon by both the Commissioner, SMSF trustees and advice professionals, what consideration has been given to the impacts on a change in position and the substantial impacts that has on all stakeholders.

Note: Issues surrounding the Commissioner's increased use of and reliance on web-based content is separately discussed at section 2.6.5.

Recommendation 4

The ANAO should examine whether the ATO's finalised position in TR 2010/1 on in-specie contribution shortfalls reflects a proportionate compliance and tax outcome, having regard to industry's sustained, substantive objections during consultation, and whether the ATO's process for finalising public rulings adequately weighs proportionality concerns raised by industry against a strict, non-discretionary application of the NALE provisions.

¹ Australian Taxation Office, *Income tax: superannuation contributions* (TR 2010/1, 24 September 2025) ('TR 2010/1').

² Ibid [25C].

³ Australian Taxation Office, *Non-arm's length income - expenditure incurred under a non-arm's length arrangement* (LCR 2021/2, 24 September 2025) ('LCR 2021/2').

Recommendation 5

The ANAO should examine whether the ATO's process for changing a long-standing position that it had also published as web guidance was appropriate, including its assessment of the impact on stakeholders who relied on that guidance.

2.1.2 Illegal Early Access

The ATO has repeatedly identified illegal early access (IEA) as a significant integrity risk. Despite the level of importance, draft guidance documents TD 2021/D6⁴ and PS LA 2021/D3⁵, both were published on 15 December 2021, remain outstanding and unresolved almost 5 years later. The ATO's published advice-under-development material states that the work was removed from the program in May 2023 and is on hold because of higher-priority work:

"Finalisation of this draft Determination and draft PS LA 2021/D3 is currently on hold due to higher priority work. We will finalise this product when the work is able to be reprioritised."

Placing guidance on the consequences of a significant risk behind "higher priority work" is difficult to reconcile with risk-based prioritisation. Trustees and advisers cannot tell how the discretion will be exercised or how the resulting amount will be taxed.

Recommendation 6

The ANAO should examine the ATO's criteria for prioritising and reprioritising draft public advice and why guidance on a risk it treats as significant has remained on hold for an extended period with no published timeframe for finalisation.

2.2 SMSF Establishment Controls

The Association supports effective front-end controls at SMSF establishment. Registration and rollover controls can play an important role in identifying inappropriate establishments, identity fraud and illegal early access before retirement savings are lost. Our concern is one of calibration.

Legitimate trustees should not be subjected to unnecessary or opaque delay mechanism, particularly where there is no clear pathway to track, understand or resolve the risk indicator. Any regulatory intervention controls, policies and programs must be supported by appropriate data and evidence, be risk based and administered fairly and efficiently to avoid unnecessary delay and costs.

A lack of data published on these activities and actions taken by the ATO adds to the level of opacity to these activities. Without clear public data, it can be difficult for trustees and tax agents to understand, support and assist the ATO's early engagement and intervention activities.

Often, we will become aware of problems arising or where a recalibration of ATO policies has occurred through member feedback and from members seeking guidance and assistance on how to best engage with the ATO. While the ATO appropriately does not disclose the specifics of such

⁴ Australian Taxation Office, *TD 2021/D6 - Income tax: tax treatment of a superannuation benefit when the Commissioner exercises the discretion in subsection 304-10(4) of the Income Tax Assessment Act 1997* (TD 2021/D6, 15 December 2021) ('TD 2021/D6').

⁵ Australian Taxation Office, *Superannuation: Commissioner's discretion where members receive benefits in breach of legislative requirements* (PS LA 2021/D3, 15 December 2021) ('PS LA 2021/D3').

activities, communication on the expectations of tax agents when applying to register funds, the ATO's process steps, an improved tracking and system of engagement would be beneficial.

Greater transparency and data would also be beneficial in informing and providing context to SMSF IEA data estimates published as part of the ATO's SMSF Tax Gap Data.

Recommendation 7

The ANAO should review the effectiveness, transparency and timeliness of the ATO's establishment risk checks, including whether risk indicators are appropriately targeted, whether legitimate applications are resolved promptly, and whether trustees and professionals have clear escalation channels when an establishment is delayed.

Recommendation 8

The ANAO should examine why available data and reporting on risk check classifications, actions and outcomes are not made publicly available.

2.3 Use of Administrative indicators as proxies for misconduct

2.3.1 Late SMSF annual return lodgement and 'Super Fund Lookup' status

Unquestionably, the timely lodgement of returns by trustees is vitally important to the integrity of the system and as such it is a statutory obligation. ATO web guidance states that if an SMSF annual return is more than two weeks overdue, the fund's status on *Super Fund Lookup*⁶ may be changed to "Regulation details removed"⁷, preventing the fund from receiving contributions or rollovers until the position is restored.⁸ These operational restrictions arise from late lodgement alone, without a separate finding of substantive misconduct.

That consequence is materially different from the ATO's broader lodgement program approach for registered tax agents, where the benchmark is 85% on-time lodgement and the ATO states that an agent's lodgement program will not be adversely affected merely because the benchmark is not met.⁹ At the organisational level, the ATO sets an internal performance target of 83% of income tax returns lodged on time, together with a 78% target for activity statements¹⁰. In comparison, SMSFs have a 100% lodgement expectation with only a narrow 2-week window before additional operational sanctions alongside the failure to lodge penalties regime.

These comparisons illustrate the need to test proportionality where a short administrative delay can disrupt contribution and rollover flows. Further, the change in fund status occurs silently and

⁶ 'About Super Fund Lookup', *Super Fund Lookup* (Web Page) < <https://superfundlookup.gov.au/FAQ/About> >.

⁷ 'Self-Managed Super Fund (SMSF) status', *Super Fund Lookup* (Web Page) , <https://superfundlookup.gov.au/FAQ/SelfManagedSuperFund> >.

⁸ 'Super Fund Lookup status for SMSFs', *Australian Taxation Office* (Web Page, 28 April 2026) QC 64569: Regulation details removed <<https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf/smsf-regulation-and-compliance/smsf-compliance/super-fund-lookup-status-for-smsfs>>.

⁹ 'Lodgement Program Framework', *Australian Taxation Office* (Web Page, 1 July 2025) QC 34613 < <https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/prepare-and-lodge/lodgment-program-framework> >.

¹⁰ Australian Taxation Office, *Australian Taxation Office Corporate Plan 2026-27* (NAT 7769-06.2026, 15 July 2026) 67.

without notice to trustees. Often the first sign is where an employer contribution fails and the member is contacted by their employer as their contributions have been returned.

The risk is heightened as contribution frequency increases under Payday Super. An operational status change can result in an employer directing contributions to another fund, followed by additional work for the member and employer to redirect future contributions and recover amounts already sent elsewhere. It also increases the risk to employers with the operation of the superannuation guarantee charge.

We are also aware of emerging cases where the financial institution has taken steps to freeze the SMSF bank accounts in response to the ATO's change of fund status on *Super Fund Lookup*. Such a response can be catastrophic for trustees, with pension payments ceased and minimum pension payment obligations at risk, loss of insurance policy protection. Insurances are held by trustees to protect fund assets, meet statutory obligations¹¹, and to pay benefits to members on the event of their death, disability or illness. Loss of cover places trustees, members, and fund assets at risk. In the absence of any other risk indicators, these are a severe and detrimental outcome.

Recommendation 9

The ANAO should examine whether the two-week Super Fund Lookup response appropriately distinguishes lateness as an administrative failure from evidence of substantive regulatory risk, and whether the operational consequences remain proportionate as contribution frequency increases.

2.3.2 Non-lodgement and fraud/illegal early access risk

Non-lodgement can be a meaningful risk indicator, particularly for newly established funds that receive a rollover and do not lodge. The ATO has publicly linked non-lodgement with broader regulatory issues and illegal early release. The Association does not dispute the value of that indicator. The concern is whether non-lodgement is treated as one risk input among several, or as a sufficient proxy for misconduct without regard to the fund's circumstances, history and other evidence.

The ATO's work in this area is important and due to its nature, it is relied upon by Government in designing and prioritising policy settings. Collapsing a purely administrative failure (paperwork not filed) into a substantive risk indicator (fraud), without distinguishing the two, risks disproportionate regulatory responses and policy responses by Government. Given this reliance, it is essential that the ATO's data collection, classification and issue linking methodologies are fit for purpose. Further, as noted throughout this submission, data should be made publicly available.

Recommendation 10

The ATO should demonstrate to the ANAO how non-lodgement is weighted with other indicators in its risk models and how its processes avoid collapsing an administrative failure into a presumption of fraud or illegal early access.

2.3.3 Low-balance SMSFs and other front-door indicators

We agree that SMSFs are not suitable for everyone, and that sustained low balances in a SMSF are not in the best interests of the member. However, a member's interest in a SMSF must be considered in their broader circumstances and overall financial interests.

¹¹ *Superannuation Industry Supervision Regulations 1994* (Cth) r 4(5)



A prospective trustee's balance may be relevant to any risk assessment, but balance alone is not a reliable indicator of whether an SMSF is appropriate or a compliance risk. As noted in 2.3.2 above, we are concerned that a single indicator is given too greater risk weighting in the absence of other key indicators.

To illustrate, a person who has lived and worked overseas may have limited superannuation and other financial assets located in Australia. Expatriates and migrants may have pension fund and other investments located internationally and seek to relocate those assets into Australia. On establishment of an SMSF, the individual/s may hold small superannuation balances or rely on member contributions to the fund to establish its *corpus*. It is intended that more substantial funds are contributed and/or transferred into the fund post establishment.

International pension fund transfers to Australia can be complex arrangements, may take many months or more to be completed. However, the compliant SMSF must be in place prior to the commencement of the transfer process in order for the transaction to occur.

Recommendation 11

The ATO should demonstrate to the ANAO how low superannuation balances are weighted with other indicators in its risk models and how its processes avoid collapsing an administrative failure into a presumption of fraud or illegal early access.

2.4 Excess contribution – ATO reclassification of residual cents

Feedback from our members has identified a systems-design and administrative issue in which whole-dollar processing can leave residual cents treated differently for contribution-cap purposes, creating potentially disproportionate consequences where the substantive difference is immaterial. The concern is administrative rather than policy-based and driven by system architecture and poor system controls. A mismatch in systems and processes should not, without appropriate controls or remediation pathways, turn a cents-level discrepancy into a materially different contribution-cap and taxation outcome.

Member's intending to claim a tax deduction for personal contributions, prior to lodging their return, must complete and provide to their superannuation fund (including SMSFs), the required notice.¹² In doing so, the member declares the total personal contributions made to the fund and the amount of those contributions they will claim as a tax deduction. Both fields contain both dollars and cents. This instructs the fund trustee on how to classify personal contributions as concessional or non-concessional. That same information is then reported by the fund to the Commissioner.

Personal deductible contributions must be claimed as a whole-dollar amount (excluding cents) as a deduction in a member's personal income tax return. The cents value is simply disregarded. The

¹² Australian Taxation Office, *Notice of intent to claim or vary a deduction for personal super contributions* (NAT71121-11.2014); also refer to 'Personal super contributions', *Australian Taxation Office* (Web Page, 23 May 2024) QC 23225 < <https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/growing-and-keeping-track-of-your-super/how-to-save-more-in-your-super/personal-super-contributions>>.



SMSF trustee reports the member contributions data shown as dollars and cents amounts in its annual return.¹³

On processing the member's personal income tax return, where the actual contribution includes cents, the ATO's processing systems truncate the deductible amount to whole dollars, with the residual cents automatically defaulting to non-concessional treatment. A contribution shortfall of mere cents appears small and immaterial, yet it is capable of triggering a full non-concessional excess contribution determination and may inadvertently activate the bring-forward provisions. This creates a disproportionate compliance outcome, including the potential loss of retirement savings requiring the forced release of funds, personal tax on 'associated earnings', or excess contributions tax currently 47%, for an error of a few cents that the ATO's own system architecture creates, not the taxpayer. One case involved a mere 36 cents.

It is extremely difficult for impacted members and their tax agents to engage with the ATO to seek assistance and support in resolving this issue. It can take many months.

Member cases raised with the Association also confirm inconsistent treatment of taxpayers with materially similar cases for example:

- in one case the assessment simply disappeared from the taxpayer's account and no formal communication or notice was received;
- in another, contribution records were corrected to avoid unintended cap consequences;
- in another case, the Commissioner was unable to assist the taxpayer

This is a useful reminder that effective risk management includes the design of ATO systems. System architecture should not turn rounding-level discrepancies or the reallocation of mere cents into significant compliance events.

While not wholly an SMSF issue, member feedback suggests this appears to be an issue disproportionately impacting members of SMSFs.

Recommendation 12

The ANAO should consider whether ATO contribution-processing systems contain appropriate controls and safeguards that prevent immaterial rounding or cents-level differences from producing disproportionate excess-contribution consequences.

Recommendation 13

The ANAO should examine the accessibility, timeliness and consistency of remediation, and consider recommending a published administrative approach within the Commissioner's lawful powers. Where legislative constraints prevent an effective solution, the ATO should identify and refer them to Treasury.

¹³ Australian Taxation Office, *Self-managed superannuation fund annual return* (NAT71226, June 2026) <<https://iorder.com.au/publication/publicationdetails.aspx?pid=71226-6.2026>>.

2.5 Transparency of the ATO's risk methodology

The ATO's SMSF guidance identifies factors informing compliance decisions, including intent, disclosure and rectification. The Association seeks greater transparency about how these factors translate into the intensity of engagement and the selection of compliance action.

For large public and multinational businesses, the ATO has published structured assurance and differentiation approaches explaining how risk, behaviour and transparency influence engagement. An SMSF specific framework could provide comparable clarity, adapted to the sector's regulatory context.

Transparency does not require disclosure of confidential risk scores or operational thresholds. It requires a clear explanation of how the ATO differentiates inadvertent error, persistent non-compliance and deliberate misconduct, and selects proportionate responses.

Recommendation 14

The ANAO should assess whether the ATO adequately explains its SMSF risk-differentiation and compliance-response principles, and consider recommending a consolidated public framework covering education, review, audit and enforcement. The framework should explain the factors informing different responses without compromising operational intelligence.

2.6 Public advice, guidance and technical issue resolution

Clear, timely and authoritative guidance is itself a risk-management tool. It reduces accidental non-compliance, sets clear parameters and examples, allows auditors to apply consistent standards and helps the ATO reserve enforcement resources for genuine integrity risks.

The Association's concern is whether the current SMSF advice and guidance architecture provides sufficient certainty about how the ATO applies the law.

The following examples highlight gaps in the availability, currency and authority of guidance, and delays in resolving recurring technical issues. Effective regulation requires not only detecting non-compliance, but giving trustees and professionals a reliable basis for getting it right.

2.6.1 The SIS Act binding-advice gap

The ATO's private binding ruling (PBR) system is limited to matters concerning "tax laws" and does not extend to compliance questions arising under superannuation law¹⁴ (SIS). The only alternative product available to SMSF trustees for SIS interpretative questions is SMSF-specific advice (SMSFSA), provided for under PS LA 2009/5.¹⁵ but this is non-binding and does not carry the same statutory reliance protections as a PBR.

PS LA 2009/5 confirms that SMSFSA can be provided on the application of the SIS Act and Regulations, but that the advice is not binding on the ATO and does not have the same review rights

¹⁴ *Superannuation Industry (Supervision) Act 1993 (Cth); Superannuation Industry (Supervision) Regulations 1994 (Cth).*

¹⁵ Australian Taxation Office, *Provision of advice and guidance by the Australian Taxation Office in relation to the application of the Superannuation Industry (Supervision) Act 1993 and the Superannuation Industry (Supervision) Regulations 1994 to self-managed superannuation funds* (PS LA 2009/5, 21 November 2024) ('PS LA 2009/5').



as a private ruling. The same Practice Statement also confirms that SMSF public rulings and guidance are not legally binding on the ATO.

This means an SMSF trustee facing a complex, unusual or high-consequence SIS Act interpretative question cannot obtain the same kind of binding, reviewable certainty that is available for many tax-law questions. The practical consequence is that taxpayers can incur the cost of seeking specific advice yet remain exposed if the ATO later takes a different view.

Recommendation 15

The ANAO should examine whether the ATO's administration of SIS Act advice provides adequate transparency, consistency and certainty, particularly for high-consequence transactions. This should include how reliance is recognised in compliance decisions, how changes in advice are managed, and whether limitations requiring legislative consideration have been identified and referred to Treasury.

2.6.2 Discontinuation of ATO Interpretative Decisions

ATO Interpretative Decisions (ATO IDs) provided concise, fact-based explanations of the ATO's interpretation of the law. They formed part of its precedential view framework, supporting consistent decisions in materially similar cases. PS LA 2001/8¹⁶ records that ATO IDs were issued between 2001 and 2017 and confirms that new decisions and significant updates are no longer prepared. It does not explain the reason for discontinuation.

The Association considers that discontinuation has left a gap in accessible, scenario-based guidance for SMSF trustees and practitioners. The issue is not the loss of a particular publication format, but whether its practical interpretative function has been adequately replaced.

PS LA 2001/8 requires processes to maintain existing ATO IDs. Substantial updates generally require a replacement product, ordinarily published before withdrawal. Withdrawal without replacement is permitted in limited circumstances. The ANAO should test whether these requirements operate effectively in practice, preserving useful guidance rather than progressively reducing its coverage

Recommendation 16

The ANAO should examine whether discontinuing ATO IDs adequately addressed the advice needs of SMSF trustees and practitioners, whether current products replace their practical interpretative function, and whether the ATO consistently implements its requirements for reviewing, maintaining and replacing legacy decisions.

2.6.3 Currency and maintenance of SMSF public rulings

Guidance must remain fit for current transactions, not merely remain available. The Association's concern is whether the ATO systematically reviews SMSF rulings for legislative change, emerging arrangements and recurring industry uncertainty.

Business real property illustrates the importance of this work. SMSFR 2009/1 explains a definition central to related-party acquisitions and in-house asset exceptions. The ATO has now published a draft update to reflect recent amendments to the LRBA provisions. This is a welcome development.

The broader question is whether maintenance extends beyond incorporating legislative amendments to addressing practical interpretative gaps. The Association seeks modern examples

¹⁶ Australian Taxation Office, *ATO Interpretative decisions* (PS LA 2001/8, 22 January 2025) ('PS LA 2001/8').

covering emerging property uses and structures, including renewable-energy arrangements. Trustees and auditors need guidance before transactions occur, not uncertainty resolved only through subsequent compliance activity.

The age of a ruling does not itself establish that it is incorrect or outdated. It does, however, make transparent review arrangements important: industry should be able to identify which products have been assessed for currency, what gaps remain and when updates are expected.

Recommendation 17

The ANAO should examine whether the ATO systematically assesses and maintains the currency of SMSF rulings and Regulator's Bulletins. It should consider recommending a published, risk-based review program prioritising legislative change, materiality, emerging arrangements and recurring industry uncertainty, with indicative timeframes and reporting on progress.

2.6.4 Cessation of the NTLG Superannuation Technical Sub-Committee

The Association considers that current consultation arrangements have not adequately replaced the former NTLG superannuation technical forum's role in progressing detailed interpretative issues.

The Superannuation Industry Stewardship Group (SISG) provides strategic discussion on emerging issues and improvements to superannuation administration. That is valuable, but distinct from resolving specific technical questions. Industry needs a transparent pathway from raising an issue to receiving a reasoned ATO position.

The twice-yearly Superannuation Public Advice Feedback Forum provides a channel for industry input into the formation and prioritisation of ATO public advice and guidance. The Association welcomes this engagement. However, informing the ATO's priorities is not a substitute for progressing specific technical issues to a concluded position.

In relation to complex interpretative matters, industry needs clear ownership, progress updates, reasoned outcomes for issues raised as well as clear escalation points where resolution stalls.

LRBA offset accounts illustrate this concern. The ATO's web guidance distinguishes genuine ADI offset accounts from non-ADI arrangements and advises due diligence for the latter. The Association continues to seek clearer guidance on the features that may create prohibited borrowings or charges. The request is not for endorsement of individual products, but an explanation of how the law applies to recurring arrangement features. Without that clarity, trustees and auditors must assess significant compliance risks without a sufficiently developed regulatory position.

Recommendation 18

The ANAO should examine whether the current consultation architecture provide an effective, accountable mechanism to identify, prioritise and resolve significant superannuation technical and administrative issues. It should consider recommending a dedicated technical forum or equivalent process with clear responsibilities, prioritisation criteria, indicative timeframes and communicated outcomes.

2.6.5 Expanded and prioritised use of web content over rulings and guidance products

We have seen a rapidly growing trend for the publication and reliance on web-based content. This source of material appears to being prioritised at the expense of formal ruling or guidance products.



Web based material is useful for consumer facing educative material, and quick messaging where a rapid response is needed. The concern is its use as a substitute for maintained, technically detailed advice on significant interpretative issues.

The Association's concern is not the publication format alone, but whether the material adequately explains the Commissioner's reasoning, practical application and the extent to which users can rely on it. Accessibility should not come at the expense of technical depth, certainty or transparent change management.

The following sub-sections set out some further, targeted feedback.

2.6.5A Governance of ATO web-based content

Accessible guidance must also be traceable. Trustees and professionals need to know what changed, when, why, and whether earlier guidance remains relevant.

The ATO increasingly relies on website content (QC articles, FAQs) as its primary, and at times only, mechanism for communicating its view on significant technical and administrative matters, in place of maintaining or updating binding public rulings. This reliance is compounded by structural weaknesses in how web-based content itself is managed.

The Association has raised specific examples with the ATO:

1. Death benefits: Substantive changes in ATO position have been made to existing guidance without explanation. QC 42934 was replaced by QC 45254, omitting the long-standing six-month administrative benchmark for "as soon as practicable" for cashing death benefits, prompting the Association to seek confirmation of the change.
2. Asset valuations: Other guidance has been restructured in ways that alter its apparent scope without clear signposting. For example, QC 26343 on valuing SMSF assets.
3. Audit evidence: Long-standing guidance can disappear from the website entirely with no confirmation of whether it has been withdrawn, replaced, or merged elsewhere. For example, QC 106292 on data feeds and bank statements.

These examples highlight a governance problem in that users should not need to seek individual clarification to establish whether revised wording changes the ATO's expectations. Without accessible version histories and clear withdrawal or replacement notices, trustees and professionals may struggle to establish the guidance applicable when a transaction occurred or advice was given.

The concern is not that web-based content should be confined to consumer education. It is whether the ATO selects an appropriate guidance product for the issue and maintains a reliable record of substantive changes.

Recommendation 19

The ATO should adopt formal governance standards for SMSF web guidance, including visible version histories for material changes, clear withdrawn/superseded markers, accessible archives, criteria for when an issue warrants a ruling or determination rather than web guidance alone, and adequate lead time for major legislative changes.

2.6.5B General powers of administration communicated only through web-based guidance

The ATO's minimum pension shortfall concession illustrates the limitations of communicating a significant administrative practice principally through web content.

The general powers of administration (GPA) is a discretionary power afforded to the Commissioner. Under the GPA, the Commissioner has allowed an account-based pension that has failed to meet minimum payment standards to nonetheless continue being treated as a pension for tax purposes.

By its nature, it is an exercise of the Commissioner's powers rather than a straightforward application of settled law. Notwithstanding this, the ATO has never issued a public ruling, determination or other binding guidance product setting out how the GPA applies to minimum pension shortfalls. The sole source of guidance available to industry is web-based content¹⁷ which is not an appropriate vehicle for communicating the scope of a discretionary power of this kind:

1. It carries no statutory reliance protection equivalent to a ruling
2. Can be altered at any time without formal consultation; and
3. Gives trustees no visibility into the legal reasoning underpinning the ATO's position.

This structural weakness was recently exacerbated when QC 103944 was updated to remove the previous requirement that a shortfall be "small" to self-assess access to the GPA due to matters outside the trustee's control. The ATO confirmed that the current wording reflects its administrative approach, including self-assessment in those circumstances without the small-shortfall requirement.

Confirmation of administrative practice does not resolve the Association's request for a clear, publicly accessible explanation of its authority and reliance safeguards. The issue is transparent administration of a concession with material tax consequences, rather than opposition to the more favourable treatment.

Recommendation 20

The ANAO should examine whether the ATO adequately documents and communicates the legal basis, limits and reliance safeguards of significant administrative concessions. For minimum pension shortfalls, it should consider recommending an enduring public explanation of the concession's authority and self-assessment conditions, supported by transparent change control.

2.6.6 Over reliance on private binding rulings and inconsistent outcomes

2.6.6A Small business CGT concessions and in-specie contributions

Over a number of years, the Association has sought clearer sector-wide guidance on the interaction between the small business capital gains tax concessions and in-specie contributions of business real property to an SMSF. For over a decade, the ATO has not issued any clear, binding public guidance confirming whether the capital gains tax event, the choice to apply the small business retirement or

¹⁷ 'Exception to minimum pension payment requirements', *Australian Taxation Office* (Web Page, 5 November 2025) QC 103944 < <https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf/paying-smsf-benefits/income-stream-pension-rules-and-payments/exception-to-minimum-pension-payment-requirements>> ('QC 103944').

15-year exemption, and the resulting SMSF contribution can occur simultaneously for an in-specie contribution.

In the absence of binding public guidance, taxpayers have had to seek transaction-specific rulings from the Commissioner. That is a time consuming and costly exercise that does not provide a reusable answer for the broader sector. The decisions in these private rulings have been inconsistent and unhelpfully seen ATO switch back and forth over time from approving to rejecting.

These transactions are not solely anchored in the administration of taxation law. These are issues that are SMSF specific and intersect with the operation of the contribution rules under SIS and tax law¹⁸, the asset acquisition rules under SIS, and then the operation of capital gains tax provisions themselves.

Small business owners and SMSF trustees face ongoing compliance risk and uncertainty, including:

1. Whether an in-specie transfer of business real property qualifies for the CGT concessions at all;
2. The risk that a contribution may be incorrectly treated as non-concessional rather than counted under the CGT cap (with associated excess contributions consequences); and
3. An unnecessary reliance on costly, taxpayer-specific private rulings in place of clear public guidance.

This is a guidance and advice failure that has persisted for fifteen years without resolution, despite being raised with the ATO as early as June 2011.

Issues such as this also present significant risks for auditors who are required to examine such transactions to ensure their compliance with SISA and the correct financial reporting of transactions which extends to transaction classification, reporting and taxation.

This is a useful case study for the ANAO. The administrative question is whether the ATO effectively identifies recurring private ruling issues and converts that experience into public guidance capable of reducing uncertainty and repeated private-ruling applications.

Recommendation 21

The ANAO should examine whether the ATO systematically identifies recurring private-ruling issues, investigates apparent inconsistent outcomes and prioritises its sector-wide public guidance.

2.6.7B Death benefit versus member benefit - public guidance from repeated private issues

Recurring uncertainty continues to arise on the issue of whether a payment is properly characterised as a death benefit or a member benefit in particular post-death circumstances. Where materially similar questions recur through private advice or rulings, leaving the sector with only high-level non-binding web guidance can perpetuate cost and inconsistent practice.

This issue is a clear example of a compliance response that was disproportionate to, and misaligned with, the underlying interpretative risk. The ATO had formed and repeatedly applied a consistent analytical view across more than a decade of private rulings, but rather than publishing that settled

¹⁸ *Income Tax Assessment Act 1997* (Cth) ('ITAA97').



view, each trustee or legal personal representative were required to independently apply for a PBR. This transfers unnecessary cost, delay and uncertainty onto SMSF trustees and their advisers.

More concerning, and despite a long period of consistency, more recent PBRs do not present a single, consistent view despite those rulings addressing materially similar facts. We have seen PBRs issued that have reached opposing conclusions with some finding it is a member benefit with others finding it is a death benefit.

This highlights the difficulty of identifying a reliable position from individual rulings. Industry is instead left with non-binding web-based guidance¹⁹ (QC 45254) that lists some relevant factors without resolving how they interact or should be weighed.

Private rulings should resolve individual uncertainty, not become a continuing substitute for developing a clear, authoritative public position on recurring interpretative issues.

Recommendation 22

The ANAO should examine whether the ATO's advice processes identify recurring private-ruling questions, investigate apparently inconsistent reasoning and prioritise public advice explaining the decisive factual and legal distinctions.

2.6.8 Ruling amendments, consultation process and retrospectivity

2.6.8A Substantive change in ATO view without consultation

In June 2024, a substantive change in the ATO's interpretation of the law was published in TR 2013/5²⁰. Paragraph 20 was inserted into the final public ruling without ever being exposed to industry consultation. The draft addendum gave no indication that this change was under consideration, meaning industry had no opportunity to identify unintended consequences, raise practical concerns, or propose workable alternatives before the Ruling took legal effect. This change has significant practical consequences for SMSF trustees.

The ATO described the amendment as clarifying its view consistently with existing web content. However, taxpayers and industry should reasonably be able to rely on a published public ruling without treating a web example as overriding or qualifying its terms. Any inconsistency should have prompted transparent reconciliation and consultation, not an expectation that industry infer a different interpretation from web content.

The substantive change was not exposed in the draft addendum for consultation. A significant change in a final public ruling can create retrospective uncertainty for trustees and practitioners who acted on the prior published position. Even where the ATO later adopts a practical compliance approach, that does not provide the same certainty as well-governed consultation before the final view is published.

¹⁹ 'Paying superannuation death benefits', *Australian Taxation Office* (Web Page, 6 November 2025) ('QC 45254') < <https://www.ato.gov.au/tax-and-super-professionals/for-superannuation-professionals/apra-regulated-funds/paying-benefits/paying-superannuation-death-benefits>>.

²⁰ Australian Taxation Office, *Income tax: when a superannuation income stream commences and ceases* (TR 2013/5, 26 June 2024) ('TR 2013/5').

This represents a material breach of the ATO's own stated consultation practices for public rulings, undermining industry's ability to rely on the draft consultation process as a genuine opportunity to influence final ATO guidance. It also created real retrospective risk for trustees who, acting reasonably on the pre-existing ruling, had treated a resumed pension as validly reinstated, exposing them to potential requirements to amend prior-year returns, recalculate tax components, and re-report transfer balance account events. More broadly, it demonstrates a systemic guidance/advice failure if significant, unconsulted changes can be introduced via addendum with immediate legal effect, leaving taxpayers and their advisers unable to prepare or adapt in advance.

Following sustained industry engagement, the ATO confirmed in early 2025 that it would not apply compliance resources to review whether pensions that failed before 30 June 2024 were properly commuted under the new view, removing the immediate risk of retrospective compliance action for past years. This partial remediation provides no certainty to industry should the issue be identified later through an SMSF audit, compliance consequences and resulting income tax consequences can still arise.

Recommendation 23

The ANAO should examine the internal controls that compare draft and final public advice products and ensure material changes in interpretation are exposed for consultation, accompanied by appropriate prospective or transitional treatment where stakeholders could reasonably have relied on the prior ATO view.

2.6.8B Post-pension-failure lump sum recalculations

Significant compliance burdens, red tape and complexity can arise where a pension has failed minimum standards and trustees must repeatedly determine tax-free and taxable components for subsequent lump sum payments. The concern is not with the policy of the proportioning rules, but whether the ATO has considered administratively simpler, risk-neutral methods where repeated calculations deliver an integrity benefit proportionate to their resulting outcome.

Following the 2021 amendments to SIS regulation 307-205.05 and the ATO's subsequent updated ruling, published June 2024, clarifying its application, trustees must recalculate the tax-free and taxable components for every individual lump sum payment made after a pension has failed to meet minimum standards, regardless of whether that recalculation changes the tax outcome for the member. This is a compliance obligation created entirely by administrative/regulatory design, not by any change in the substantive policy intent of the proportioning rules.

Trustees and auditors face repeated, recurring compliance costs — earnings allocations, asset valuations and component recalculations before every single post-failure payment — where the outcome is immaterially different to what a simpler, once-off calculation would produce. This increases audit friction, raises the likelihood of inadvertent error (itself then becoming an audit/ACR-reportable matter), and consumes trustee, adviser and auditor resources on a matter that does not promote integrity nor protects material revenue. It is a clear example of a compliance response that is disproportionate to the risk it addresses, and consistent with the ANAO's broader task of assessing whether ATO administration imposes unnecessary burden on the SMSF sector.



Recommendation 24

The ANAO should examine whether the ATO has adequately assessed the compliance burden of post-pension-failure component calculations and considered lawful simplification options. Where legislative constraints prevent an effective administrative solution, the ATO should identify and refer them to Treasury.

3. Monitoring and reporting of SMSF compliance

The ATO's monitoring framework depends heavily on information supplied through annual returns, data matching and the work of approved SMSF auditors. The quality of the regulatory response depends not only on the volume of information collected, but on whether the data is sufficiently material, well calibrated and interpreted in context.

3.1 Balance the auditor's gatekeeper role with proportionate expectations

The Association strongly supports high-quality, independent audits of SMSFs. That role should not, however, become a substitute for ATO regulatory action or for accountability elsewhere in the system. Auditors face significant professional and regulatory consequences for failures in audit work.

Where reported trustee contraventions receive little visible regulatory response, the system can appear to place disproportionate risk on the gatekeeper while providing limited feedback about what occurs after the gate is opened.

Auditors already experience pressure from some trustees and other professionals when an ACR is lodged. This friction can lead to reputational and business harm where auditor reports and qualifies significant concerns and/or compliance matters, while it appears that little or no regulatory action is taken by the ATO in response. While a strong regulatory response is taken with auditors on documentary and administrative matters, auditors have expressed concerns on the appearance of a lack of action or accountability for compliance issues with trustees and/or another party such as a connected professional.

Recommendation 25

The ANAO should examine whether the ATO's reliance on approved SMSF auditors is appropriately balanced with timely regulatory follow-up, clear guidance, meaningful feedback and accountability for trustees and other participants whose conduct gives rise to the compliance issue.

3.2 Auditor Contravention Reports (ACR)

3.2.1 Critical data source

Approved SMSF auditors are a central integrity mechanism for the SMSF sector. The ACR framework gives the ATO information about prescribed contraventions, and the ATO's instructions require auditors to apply reporting criteria to determine which matters must be reported.

The Association is concerned that the ATO can place significant weight on ACR volumes and auditor behaviour without providing a corresponding feedback loop to improve the quality of the source data. Members report that they generally receive no feedback on whether an ACR led to action, whether the ATO considered the matter low risk, or whether reporting practice is over- or under-calibrated. This makes it difficult for auditors to learn from regulatory outcomes and for the ATO to

improve the consistency of the dataset it relies on. Members describe ACRs as going "into a black hole."

Recommendation 26

The ATO should publish aggregate ACR outcome information and provide auditors with proportionate feedback mechanisms, including examples of reporting that is useful, unnecessary or commonly misunderstood, while respecting taxpayer secrecy and operational constraints.

3.2.2 Administrative and documentary breaches can dominate the signal

Member feedback indicates that a substantial proportion of recurring audit findings relate to administrative matters or documentation. These matters can be important, but they are not necessarily equivalent indicators of deliberate misuse or member harm.

If they dominate ACR or auditor-compliance datasets, the ATO needs to be careful that the volume of administratively reportable events does not distort its picture of underlying sector risk.

The ATO's own auditor compliance program continues to identify the same top 5 deficiencies year after year:

1. asset ownership and existence
2. market valuation
3. arm's length dealings
4. charges over assets; and
5. trustee declarations

Most of these are administrative or documentary in character rather than indicators of deliberate misconduct, yet they drive the bulk of ATO/ASIC referral activity.

The ATO confirmed the increase in ACR numbers has been driven mainly by administrative breaches including trustees failing to report assets at market value, failing to retain trustee minutes, and trustees not signing declarations, rather than growth in serious contraventions.²¹ Compliance risk signals are now increasingly administrative in nature.

High volume reporting increases the drag on resourcing and costs to both SMSF auditors and the ATO itself. The time taken to prepare, lodge, synthesise, process and review all incur system, time and resourcing costs. Over reporting risks creating junk data which can detract from more serious compliance matters. Reporting must be balanced with the value and best-case use of the data reported, alongside the compliance risks to SMSF auditors who do not maintain high levels of ACR lodgements versus any real high-risk activities or compliance concerns identified and acted upon by the Commissioner.

Recommendation 27

The ANAO should examine how the ATO distinguishes documentary/administrative findings from substantive integrity risks when analysing ACR data, selecting compliance cases and reporting on SMSF non-compliance.

²¹ Keeli Cambourne, 'Late-run LRBAs attracting ATO attention', *SMSFAdviser* (online, 10 September 2026) <<https://www.smsfadviser.com/late-run-lrbas-attracting-ato-attention/>>.

3.2.3 ACR materiality thresholds

ACR reporting criteria²² requires SMSF auditor to lodge an ACR where the total value of all identified contraventions in a fund exceeds \$30,000 (Test 7), regardless of the outcome of the proportionate 5% of total fund assets test (Test 6). This fixed dollar threshold was set when the ACR framework²³ was introduced in 2013 and has not been indexed or reviewed since. Industry has been lobbying for change for some time, however the ATO have been resolute in maintaining the status quo.

A static nominal threshold can become progressively less meaningful as fund values, asset prices and the value of the penalty unit change. It can also cause breaches with very different risk characteristics to generate the same reporting obligations. This is also an ongoing friction point for SMSF auditors in dealing with SMSF trustees and the advisers, accountants and tax agents who represent them.

A 'new fund test' applies a significantly lower reporting threshold. If the SMSF is less than 15 months old and there are contraventions, the auditor must identify if any single contravention has exceeded \$2,000. If this is the case, the auditor is required to report all contraventions, regardless of the financial thresholds and the size of the fund itself.

While we understand that the ATO seeks to place greater scrutiny on newly established SMSFs, it is unclear whether the adoption of such a low threshold has materially enhanced compliance outcomes or enabled more timely regulatory actions to be taken by the ATO. Greater risks reside in the population of new funds that do not lodge returns or engage with the Commissioner compared to trustees that seek to meet their trustee, reporting and lodgement obligations.

Recommendation 28

The ATO should periodically review ACR financial thresholds and tests, with industry consultation, to ensure they remain material, risk-based and fit for purpose. The review should consider whether different categories of contravention warrant different materiality treatment rather than relying on a single fixed threshold.

4. Investigation, enforcement and sanctions

The Association supports firm action where trustees deliberately misuse the system or fail to rectify serious contraventions. Proportionality must work in both directions. Lower-risk matters should not attract unnecessarily severe administrative consequences, and serious matters should not remain unresolved after they are brought to the ATO's attention.

4.1 Test the effectiveness and proportionality of the post-2014 compliance toolkit

Since the ANAO's earlier SMSF work, the ATO has gained a broader compliance toolkit, including administrative penalties, rectification directions and education directions. The ANAO should specifically examine whether the SMSF administrative penalty, rectification direction and education

²² 'Reporting criteria', *Australian Taxation Office* (Web Page, 11 March 2025) QC 17603 < <https://www.ato.gov.au/forms-and-instructions/auditor-actuary-contravention-report-instructions/reporting-criteria>>.

²³ 'Completing the auditor contravention report', *Australian Taxation Office* (Web Page, 11 March 2025) QC 17603 < <https://www.ato.gov.au/forms-and-instructions/auditor-actuary-contravention-report-instructions>>.

direction regime introduced since the 2007–08 review is achieving its intended educative and corrective purpose. In particular, whether the automatic CPI-linked escalation of penalty unit values remains proportionate absent any corresponding review of the underlying contravention thresholds, penalty settings, and the operation of ATO case management and penalty remissions processes.

PS LA 2020/3²⁴ sets out the ATO’s administration of SMSF administrative penalties under section 166 of the SIS Act.

The value of a Commonwealth penalty unit increased from \$170 in 2014 to \$364 from 1 July 2026. Because many SMSF administrative penalties are expressed as a fixed number of penalty units, the dollar consequence can increase automatically through indexation even though the underlying contravention threshold and the relative seriousness of the conduct have not been reviewed at the same time.

Indexation is not itself an ATO decision. The relevant administrative question is whether the Commissioner’s selection and remission practices remain proportionate to the misconduct and whether the overall toolkit continues to achieve an educative and corrective purpose rather than producing penalty stacking for lower-risk behaviour.

Recommendation 29

The ANAO should assess whether the ATO’s use of administrative penalties, rectification directions and education directions is proportionate, consistently applied and demonstrably linked to behaviour and risk. The review should include whether fixed penalty settings have become disproportionate as penalty-unit values have risen.

Recommendation 30

The ATO should provide a standing, publicly accessible explanation of its risk-tiering criteria for compliance escalation decisions (education vs penalty vs disqualification vs prosecution), reviewed and updated periodically.

4.2 Trustee education

Education directions can be an important alternative or complement to punitive responses where a knowledge gap contributed to a contravention. This however leads to two administration questions:

1. whether education directions are genuinely used as an educative tool rather than simply stacked with penalties, and
2. whether trustees have accessible approved courses that reflect the statutory framework’s intention that education can support remediation.

4.2.1 Approved Trustee Education

The Association notes that delays in the availability of approved trustee education previously impeded finalisation and use of the education-direction framework. The ATO has since made trustee education available, which is an important and positive development. The ANAO should nevertheless examine whether the course pathway is sufficiently visible and accessible to trustees

²⁴ Australian Taxation Office, *Self-managed superannuation funds - administrative penalties imposed under subsection 166(1) of the Superannuation Industry (Supervision) Act 1993* (PS LA 2020/3, 24 October 2024) (‘PS LA 2020/3’).

and whether the ATO's administration supports external approved education where the legislation permits it.

The statutory approved course framework under SIS section 160 anticipated that education could be delivered by external, industry-led providers as well as the ATO. However, by January 2023, the ATO had removed the last externally approved course and the pathway for 'other entities' to deliver approved courses now appears unavailable or unclear.

The absence of an approved course directly stalled the ATO's own finalisation of its PSLA guidance on education directions and the Commissioner's ability to issue Education Directives.

The ATO has since developed and made available its own trustee education course, but this course is hosted on a separate government portal (smallbusiness.taxesuperandyou.gov.au) under a generic small-business title that does not reference SMSFs, superannuation or trustees.

Recommendation 31

The ANAO should test whether the ATO's administration of trustee education has been timely, accessible and aligned with the statutory framework's original design.

Recommendation 32

The ANAO should test whether education directions are being used consistently for knowledge-based contraventions, whether they are unnecessarily combined with financial sanctions, and whether approved trustee education is accessible, clearly signposted and aligned with the statutory design.

4.3 Trustee disqualification

Disqualification is an important tool for removing unsuitable trustees from the system. The SIS Act makes it an offence for a disqualified person knowingly to act as a trustee, and the SMSF definition contains limited circumstances in which another person, including a legal personal representative, may act in place of a member.

4.3.1 Single-member funds and practical exit pathways

The Association's concern is a practical one for single-member funds. Once the sole trustee/director is disqualified, the fund may need to restructure, appoint an eligible trustee, roll over benefits or wind up. The ATO should ensure the administrative consequences of disqualification do not create a deadlock that frustrates the very remediation the regulator wants to occur.

Once a sole trustee/director of a single-member SMSF is disqualified under SIS section 126A, they must immediately resign²⁵, yet their legal personal representative is expressly prohibited from stepping in on their behalf.²⁶ This leaves the fund with no lawfully appointed trustee at all, within a fixed six-month window to restructure.

Each of the available remedial pathways—rollover, conversion to a Small APRA Fund, wind-up—requires action by a validly appointed trustee/director which the fund no longer has. This creates real audit, rollover and final-return finalisation deadlock for exactly the population²⁷ the ATO has most reason to want promptly and cleanly exited from the system.

²⁵ *Superannuation Industry (Supervision) Act 1993* (Cth) s 126K: *continuing to act is an offence*.

²⁶ *Superannuation Industry (Supervision) Act 1993* (Cth) s 17A(10).

²⁷ Includes recently disqualified and already non-compliant trustees.

Recommendation 33

The ANAO should examine whether the ATO provides a clear, workable and timely administrative pathway for single-member SMSFs following trustee disqualification, including coordination with other agencies and guidance on how the fund can lawfully, and efficiently exit or restructure.

4.3.2 Revocation of disqualification and public register administration

The Commissioner has a broad discretion to revoke a trustee disqualification "on application by the disqualified individual or on its own initiative."²⁸ Just as a disqualification must be published, so too must any revocation.²⁹ However, there is no legal requirement, and no established ATO practice, to remove the original disqualification notice from the ATO's Disqualified Trustee Register which is published online. This means it remains visible and the individual may still face ongoing reputational consequences, despite the revocation.

The ATO's public information states that the Disqualified Trustees Register contains individuals disqualified by the ATO since 2012 and is used by the public to determine whether a potential trustee has been disqualified. A historical record can serve a legitimate transparency purpose, but the register should also communicate current legal status accurately and proportionately.

Recommendation 34

The ANAO should examine whether the ATO's current administrative practice on revoked disqualifications reflects a considered, proportionate policy position or an administrative default.

Recommendation 35

The ATO should have and publish a clear policy for how revoked disqualifications are presented in its public register, including whether the original entry is removed, annotated or otherwise linked to the revocation so that the register does not create a misleading impression about current status.

4.4 Deregistered corporate trustees - cross-agency enforcement gap

Corporate trustees are now the dominant SMSF structure. Regulated by ASIC, a trustee company can be deregistered by ASIC for non-payment of the annual review fee, including where notices are sent to an outdated address. On deregistration, the company ceases to exist and the ATO no longer has a trustee for the fund who they can deal with or demand lodgement from or even apply a non-complying notice of assessment against. This creates a structural enforcement gap for exactly the population the ATO most needs to act against. Real-world consequences include unresolved asset ownership and title questions, audit uncertainty regarding compliance with the trustee covenant and difficulties reinstating the trustee.

Where a company is deregistered, bank accounts will be frozen and trust-property issues can require appointment of a new trustee, transfer of property or reinstatement. These consequences are not merely corporate-law administration. For an SMSF they can affect who the ATO can deal with, how returns are lodged, how assets are dealt with and how contraventions are rectified.

The Association understands this is a recurring issue. This is an issue that crosses agency boundaries and can leave a non-compliant or non-lodging fund harder, rather than easier, to regulate once its corporate trustee ceases to exist.

²⁸ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 126A(5).

²⁹ *Superannuation Industry (Supervision) Act 1993 (Cth)* s 126A(6)–(7).

The Commissioner should be informed of an impending special purpose trustee company deregistration action by ASIC. This would enable the ATO to take pro-active action to engage with the fund trustee and/or tax agent, or to take any other necessary action.

Various programs have improved registry data across registers and should allow for good engagement between agencies, and agency to trustee and/or registered tax agent.

Recommendation 36

The ANAO should examine whether the ATO and ASIC have adequate cross-notification and case-management arrangements for SMSFs whose corporate trustee is at risk of, or has undergone, deregistration, and whether a coordinated administrative or legislative solution is required.

Recommendation 37

The ANAO should examine why this issue, acknowledged internally by the ATO as a longstanding and recurring compliance gap, has not resulted in an administrative or legislative solution. The ANAO should consider recommending that the ATO work with Treasury and ASIC to develop a coordinated framework — potentially including earlier cross-notification between ASIC and the ATO before deregistration takes effect.

4.5 Responsiveness to serious contraventions

A proportionate framework must work in both directions. Concerns we have raised elsewhere in this submission about disproportionate responses to minor administrative matters should not obscure the need for timely action where serious non-compliance is self-disclosed, reported by an auditor or otherwise brought to the ATO's attention.

The ATO's voluntary disclosure framework recognises that unrectified contraventions can be disclosed before an audit and that the disclosure will be taken into account in deciding what further remedial and regulatory action is appropriate. The Association supports trustee access to this pathway and its underlying intent. Trustees should be actively encouraged to address and remediate any compliance issues arising in a timely and appropriate manner.

Member feedback has indicated that there is often no evidence of regulatory action being taken by the Commissioner when the fund returns for audit the following year. This includes where serious misconduct has been reported by the fund auditor via an ACR.

Recommendation 38

The ANAO should test the timeliness of ATO triage and escalation where serious contraventions are disclosed through annual returns, voluntary disclosure or ACRs, including whether there are service standards or internal controls to prevent high-risk matters remaining unresolved while low-risk administrative actions are automated.