23 October 2026

Attn: The Contact Officer
Australian National Audit Office
GPO Box 707
Canberra ACT 2601
AUSTRALIA

Lodged via online portal

Dear Sir/Madam

Performance Audit into Australian Taxation Office's (**ATO**) regulation of Self-Managed Superannuation Funds (**SMSFs**)

Chartered Accountants Australia and New Zealand (**CA ANZ**), CPA Australia and the Institute of Public Accountants (**IPA**) ("**the joint bodies**") welcome the opportunity to provide this joint contribution to the Australian National Audit Office's (**ANAO**) above performance audit.

We represent our members who are practising accountants and auditors working in the SMSF sector. Many are approved SMSF auditors, registered tax agents or accountants, and some are financial advisers.

The ATO has a wide-ranging role in relation to SMSFs. In broad terms, it has a dual regulatory function in relation to SMSFs – it is a compliance regulator and, as SMSFs are potentially tax paying entities, the ATO also has its typical role as tax collector.

SMSFs are a particular type of superannuation vehicle available in Australia. The ATO also has a role in relation to general taxation and reporting matters involving the whole superannuation system including SMSFs. This includes, but is not limited to, various contributions caps, Divisions 293 and 294 (of the *Income Tax Assessment Act 1997* – ITAA97) matters, Data & Payment Standards, employer compliance with Superannuation Guarantee, GST and, in the near future, Division 296 of the ITAA97.

As at 30 June 2026, the ATO stated that there were just over 680,000 SMSFs. Over time the growth rate in the number of SMSFs has varied significantly however has recently begun to accelerate compared to prior years.

As with other entity types that have large populations, the ATO cannot be actively involved in overseeing every SMSF at all times.

According to the ATO's SMSF Annual Overview for 2023/24, 99 per cent of SMSFs use a Registered Tax Agent (**RTA**) to lodge their SMSF Annual Return (**SAR**). Approximately 13,000

RTAs are involved in completing this task. The 2023/24 ATO SMSF Annual Overview states that approximately 2,940 SMSF auditors are involved in completing an annual reasonable assurance engagement for each fund's financial statements and compliance with various provisions in the *Superannuation Industry (Supervision) Act 1993* (**SIS Act**). SMSF auditors are also required to report to the ATO specific SIS Act breaches that have been identified via the lodgement of an Auditor Contravention Report (**ACR**).

ATO's SMSF annual statistics show that SMSF auditors lodged an ACR for 3.3 per cent of SMSFs that lodged a SAR. In other words, over 96 per cent of SMSFs did not have any contraventions reported. Based on other ATO statistics, the ATO estimates the net tax gap for small superannuation fund (funds with less than 7 members including SMSFs) is less than 4 per cent. Finally, only a small number of SMSFs are found by the ATO to be non-compliant and hence face income tax penalties.

We therefore conclude that the SMSF sector is generally well run and well regulated. Available ATO data indicates that most lodging SMSFs comply with their taxation and superannuation obligations and that serious non-compliance is concentrated within a relatively small proportion of the sector. The annual independent audit, tax-agent lodgement process and ATO data-matching and compliance programs collectively provide a strong regulatory framework. However, these aggregate indicators should not obscure areas in which regulatory administration, risk identification, follow-up and transparency could be improved.

Many of these RTAs and SMSF auditors are practising members of the joint bodies. They are subject to obligations under relevant legislation, mandatory standards and additional requirements the joint bodies impose on our practising members. In our view, these obligations together provide a practical and effective mechanism to support regulatory and tax compliance across the SMSF sector.

Given the ATO's dual compliance and taxation functions, trustees, RTAs, SMSF auditors, financial advisers and professional associations rely on the ATO for guidance and assistance.

In framing our response, the joint bodies have actively sought feedback from our members. That feedback has helped shape this contribution to this performance audit.

Our detailed comments are contained in the **Attachment**.

We would welcome the opportunity to discuss our submission or provide further input as the determination is finalised. If you would like to discuss any of the issues we raise in our submission, please contact Tony Negline, Superannuation & Financial Services Leader at Chartered Accountants Australia and New Zealand at tony.negline@charteredaccountantsanz.com.

Sincerely,

CHARTERED ACCOUNTANTS AUSTRALIA + NEW ZEALAND

CPA AUSTRALIA

IPA INSTITUTE OF PUBLIC ACCOUNTANTS

Tony Negline
Superannuation and Financial Services Leader
Chartered Accountants Australia and New Zealand

Richard Webb
Superannuation Lead
CPA Australia

Michael Davison
General Manager Advocacy & Emerging Policy
Institute of Public Accountants

CHARTERED ACCOUNTANTS AUSTRALIA + NEW ZEALAND
CPA AUSTRALIA
IPA INSTITUTE OF PUBLIC ACCOUNTANTS

Attachment

Detailed comments

Transparency and accountability of ATO use of the annual SMSF regulatory fee

After lodging a SAR, each SMSF will receive an assessment. One component of that assessment will be the annual regulatory fee – currently $259 for each fund. The purpose of this levy is to ensure that regulatory costs should be borne by those who benefit from the relevant regulatory effort.

For 680,000 SMSFs this equates to approximately $176 million. We acknowledge that, for a variety of reasons, not all SMSFs lodge a SAR and hence the ATO does not collect the whole levy amount each year. We estimate that the ATO would collect between 85 and 90 percent of the estimated total fee noted above each year.

However, there is no visibility of how this money is expended. We believe that it should only be expended on the ATO's efforts to ensure SMSFs are complying with their SIS Act obligations. That is, it should not be used for any other purpose.

Understanding how the total regulatory fee is expended will be more important as the government's recent announcement that it intends to increase the SMSF annual regulatory fee to $295 with the additional fee to be used to "enable stronger consumer protection measures to safeguard SMSF members from financial abuse, scams, fraud and misconduct".

ATO's regulatory role in relation to SMSF auditors

Review process efficiency

Member feedback indicates that ATO reviews can involve lengthy timeframes, requests for additional information well after initial contact, and insufficient clarity about the scope and focus of the review. Members also report further delays where an auditor disputes a preliminary finding. These issues can create uncertainty for auditors and increase the regulatory burden.

We suggest the ATO consider clear service level commitments for the key stages of an auditor review. These could include a defined scope at the outset, expected timeframes and a clear path to escalate or seek review of findings. We would also encourage the ATO to establish appropriate key performance indicators and outcome metrics, supported by regular public reporting, to assess the effectiveness of its reviews and their contribution to improving audit quality.

Inconsistent service experience

Members report variations in the ATO's approach to auditor reviews, including the technical expertise applied and the clarity of communication. These variations can create uncertainty about how the ATO assesses compliance with the standards. We recommend consistent

review processes supported by reviewers with practical audit experience to strengthen confidence in the review process.

Quasi standard-setting and interpretation

We are concerned by the ATO's tendency to adopt bright-line interpretations of principles-based auditing standards that require professional judgement, including in relation to auditor independence, audit evidence and documentation. This can, in effect, create a quasi standard-setting or interpretation role, with regulatory expectations treated as prescriptive requirements rather than allowing for the exercise of judgement within the standards. While we recognise the practical reasons for seeking clear and consistent expectations, we consider that standard-setting and authoritative interpretation should remain independent of regulation and oversight. We therefore recommend that the ATO address relevant issues through engagement with the responsible standard setters and the audit community, rather than through unilateral interpretations that effectively supplement or narrow the standards.

Communication, resourcing and engagement

From a joint body perspective, for many years we have experienced excellent assistance from various ATO staff in relation to SMSFs. In addition, ATO engagement with the joint bodies and practitioners through conferences and presentations has long been viewed positively, particularly in highlighting compliance risks and red flags. However, a constant theme from our members is the challenge of communicating with the ATO when dealing with specific client matters.

Our members have reported having frequent issues with all relevant SMSF areas of the ATO. Assistance from the ATO's call centres can be variable with lengthy wait times to speak to someone. At times, the ATO employee can be extremely knowledgeable, provide excellent service and solve problems quickly. On other occasions the service quality can be the exact opposite. After receiving poor service some of our members wait a short period before contacting the ATO call centre again in the hope of speaking to someone with better knowledge, training or experience.

Some members have reported that ATO staff can take a very strict hardline approach to some matters when a pragmatic approach would provide a better solution. A good example of this is "client-agent linking" especially for deceased trustees.

In addition, upon lodgement of forms or other communication, our members state that it can be challenging to determine the status of a request within the ATO. As a result, it can require a follow up which can be time consuming and costly for clients. Our members report that they could spend ongoing time and energy – and incur additional costs for clients – to ensure that a client's affairs are being dealt with in a timely manner by the ATO.

In some cases, given the time delay in providing assistance, issues may take two or more financial years to resolve. If the SMSF trustees are seeking to solve an issue before closing

their SMSF then they are being forced to keep that fund open until the matter is resolved which means higher costs. In other cases, it may not be clear who can lodge particular documents, for example, involving voluntary disclosures, and when they can be lodged.

For very complex matters, staff allocated can be replaced with individuals who may lack sufficient background knowledge of a case or may have insufficient knowledge of the SMSF sector and its legislative requirements.

There are a number of inconsistencies in the ATO systems that can have real consequences for our member's clients. For example, when an SMSF's status on the SuperFundLookUp website is noted as "Regulation Details Removed" or "Regulation Details Withheld" it may be that some ATO documents will not be sent to those SMSFs. For example, Division 131 of the *Tax Administration Act 1953* Release Authorities are not sent to SMSFs with these statuses.

Effectiveness of the ATO's management of risks associated with SMSF regulation

Given that most SMSFs each year have their SAR lodged by a RTA and an independent audit is completed by a SMSF auditor, as we noted above, we consider that the SMSF sector is well regulated.

As part of the establishment process for SMSFs, the ATO currently has processes in place to determine if the trustees should be scrutinised before being allowed to operate an SMSF. In some cases, trustees may be required to personally attend an online interview with an ATO staff member.

It is the joint bodies' impression that these additional checks only apply to a small minority of new SMSFs. In the recent scandals – for example the failures often referred to as the Shield, First Guardian and United Global Capital collapses – some newer SMSF trustees have claimed not to understand the vehicle that they have set up and sought compensation for poor financial advice from the Australian Financial Complaints Authority.

We acknowledge the Government's recent announcements to strengthen protections in the SMSF sector, set out in Treasury's fact sheet of 19 August 2026. For example, we support in principle the introduction of mandatory trustee education before SMSF registration, and the support for industry-led initiatives to lift standards across the sector. We consider that trustee education is a practical way to address issues early. In time, these measures may reduce the Shield, First Guardian and United Global Capital incidence among newly established SMSFs.

However, it is too early for us to comment on how effective the measures will be, as we have not yet seen the detail. We would welcome the opportunity to engage with Treasury and the ATO as the proposals are developed.

Recommendation for improvement in the regulation of SMSFs

We suggest there is a cohort of SMSFs that should be formally wound up but are unable to be wound up. This could be due to the fund has no money left or it holds only a small balance, sometimes because of fraud or theft by others. In both cases the trustees may lack the personal resources to pay for the wind-up. These SMSFs need ATO assistance or concessions.

The ATO should investigate how trustees are able to access their SMSF's records online especially when the fund has a corporate trustee.

Finally, we consider that for high-risk situations the ATO should enter into an enforceable undertaking with SMSF trustees that they will exit the SMSF system.

ATO oversight, monitoring, and reporting of SMSF compliance

SMSF compliance is not the ATO's job alone. High levels of compliance depend on every part of the system doing its role. That includes trustees, advisers, RTAs and SMSF auditors, as well as the ATO as regulator.

Annual independent audits, ACRs, data matching and other reporting mechanisms mean that much SMSF trustee non-compliance is reported to the ATO. In our view, these mechanisms appear to be working effectively.

We make these statements because of the small number of ACRs that are submitted to the ATO (based on the ATO's SMSF annual statistics, ACRs are lodged for 3.3 per cent of SMSFs that have lodged SARs). To put this another way, over 96 per cent of SMSFs that have lodged a SAR have not had any reportable SIS Act compliance issues. Since ACRs were lodged for approximately 3.3 per cent of SMSFs that lodged a SAR, this suggests that reportable contraventions are concentrated in a minority of funds, notwithstanding the fact that the absence of an ACR is not a comment on non-reportable contraventions of the SIS Act.

We also note that only a small number of SMSFs are found by the ATO to be non-compliant and hence face income tax penalties.

However, our members have noted that once the above reports, especially ACRs, have been received by the ATO the level of follow up can, at times, be inconsistent. We have already noted the delays in corresponding with our members and trustees. In some cases, our members, and their SMSF trustee clients have no information to indicate that further ATO action will or will not occur over an extended period of time.

Whilst we consider ACR lodgements to be an effective compliance monitoring tool, the monetary thresholds that trigger an ACR have not been updated for many years. The $2,000 threshold for new SMSFs was introduced in 2011, while the $30,000 threshold applying to all SMSFs was introduced in 2009. We consider these thresholds are now outdated and should be reviewed.

The joint bodies consider that the ATO should review whether the current criteria continue to identify matters that are material and useful for regulatory intervention.

That review should consider:

- changes in asset values and the effects of inflation;
- the regulatory outcomes generated by reports captured only because of a monetary threshold;
- whether fixed-dollar and percentage-based tests remain appropriately calibrated;
- the treatment of repeated or deliberate contraventions; and
- the risks associated with newly established and low-balance funds.

Any revision should preserve mandatory reporting for serious, deliberate or repeated misconduct, irrespective of the amount involved.

We support the appropriate application of the AUASB standards and we recommend that the ATO, ASIC and the AUASB periodically review the interaction between the Independent Auditor's Report (**IAR**), SAR and ACR to ensure those mechanisms remain appropriately targeted and internally consistent.

We accept that from time-to-time unusual compliance outcomes will arise. However, one of our members told us that one new client had failed to lodge at least 10 years of SARs and had not received any communication from the ATO about their SMSF. On the other hand, the same member had a client with two years of SARs outstanding who had been issued with so called "red letters"[1].

Recommendation for improved SMSF administration

We suggest that the ATO should publish de-identified compliance outcomes to provide practical guidance on how common compliance issues are treated.

Effectiveness of the ATO's investigation and sanctioning of non-compliant SMSFs

Based on feedback from our members, the ATO investigates a range of potential SMSF compliance issues, including illegal early access (that is, taking money out of the superannuation system before being legally allowed to do so), related-party arrangements (for example, loaning money to fund members, their relatives or related entities), collectibles, asset valuation concerns and repeated non-compliance with the various SIS Act requirements.

[1] https://www.ato.gov.au/media-centre/smsf-compliance-what-s-on-the-regulators-radar