Australian Government

Dashboard Impact Analysis (IA) – Enhancing consumer protections for SMSF establishments, and Realignment of the SMSF supervisory levy

Treasury

The proposed policy approach and policy problem addressing

Proposed approach

The reforms strengthen consumer protections for individuals establishing new self-managed superannuation funds (SMSFs). The reforms respond to recent misconduct and fraud risks highlighted by the Shield and First Guardian collapses, as well as broader concerns regarding inappropriate SMSF establishments, illegal early access schemes and high-risk investment arrangements. In the case of Shield and First Guardian, losses occurred after members of superannuation funds were contacted by lead generators and referred to financial advisers. Advisers recommended members roll over to SMSFs or platform funds in order to invest into managed investment schemes which exposed individuals to high risk products and a lack of diversification.

The reforms introduce new safeguards at the SMSF establishment and registration stage:

- Introduce new powers for the Australian Taxation Office (ATO) to delay SMSF registration and prevent rollovers while concerns are investigated.
- Introduce mandatory trustee education prior to registration.
- Require every SMSF to maintain a uniquely identifiable bank account in the name of the SMSF.
- Require preparation of a written investment strategy before registration and submission to the ATO.
- Require payment of the first-year SMSF supervisory levy as a condition of registration.
- Enable ATO collection of information related to advisers or other intermediaries involved in the establishment process, and collection of information on ongoing advice arrangements.

As well as these safeguards, the reforms also raise the level of the annual SMSF levy from $259 to $295 to account for the additional regulatory activities necessary to give effect to this package.

This set of reforms has a number of policy objectives, including:

- to improve the regulatory controls in place that can interrupt fraudulent or ill-advised and high-risk investment schemes, akin to the Shield and First Guardian business model
- to improve awareness of the significant step-up in obligations and risks when an individual moves their superannuation from an APRA-regulated environment into the SMSF environment
- to reduce the incidence of SMSFs being set up without genuine intention to operate the fund for the purpose of delivering retirement income. There are a broad range of misuses of SMSFs due to the autonomy offered – including a range of contraventions of the regulatory framework that exists to ensure SMSFs are used for genuine purposes. This may include:
  - Illegal early access to super through the SMSF
  - Prohibited loans to related parties, including members or relatives
  - Acquiring assets from a related party
  - Failure to submit year-end SMSF annual returns, and pay the associated SMSF supervisory levy.
- to improve the baseline level of commitment and planning that trustees must show prior to an SMSF being registered and issued a notice of compliance.
- to improve the flow of information to regulators to support them to intervene to reduce investor losses.

The reforms will be supported by other ongoing ATO regulatory initiatives to better inform individuals of the financial risks involved in choosing to manage superannuation through an SMSF – including exploring opportunities to improve the visibility of information on SMSF investment rates of return and SMSF advice fees.

Policy problem

The Shield and First Guardian collapse exposed a complex business model that ultimately targeted and led to the loss of superannuation savings. This package targeted at SMSF establishments is necessary as part of the Government's response to the Shield and First Guardian collapse. While the Shield and First Guardian collapses primarily involved superannuation platforms, SMSFs have previously been at the centre of other large-scale loss events involving misconduct[1]. There was also a significant subset of targeted individuals that invested into Shield and First Guardian through SMSFs.

The Government's response to the Shield and First Guardian collapse will enhance protections at various other stages in the business model that led to these collapses – for example protections for members in platforms, and restrictions on marketing / lead generation activity. If a government

[1] For example, Dixon Advisory and United Global Capital were large scale failures that predominantly involved investor losses through SMSFs.

response did not also include improvements in protections for SMSFs, this could expose a gap which allows bad actors to refocus their attention on SMSFs for similar future schemes.

In addition, there are specific and known deficiencies in the SMSF regulatory environment that the reforms seek to improve upon, as well as general market and environmental developments in recent years that warrant this intervention:

- Industry and regulator intelligence suggests that improved technology has led to a higher proportion of SMSFs being established with the assistance of low-cost and low-administration burden service providers. This means SMSFs can be established very easily and quickly, with or without licensed financial advice. While speed and ease of establishment isn't problematic in and of itself, it adds to the risk of individuals being persuaded to open an SMSF for inappropriate, high risk investments or outright fraudulent schemes. This speed and ease means there can be limited access to third-party perspectives for individuals under pressure, and limited time for the individuals to deliberate on the decision.
- Individuals are not currently required to display an understanding of their regulatory obligations as the trustee of an SMSF, or acknowledge the additional risks involved compared to an APRA-regulated super fund.
- The ATO currently has limited ability to withhold an SMSF's notice of compliance where it has concerns. This means in many cases an SMSF must be established and registered, and a contravention must occur before the ATO can intervene. In cases of illegal early access, it can be the case that the ATO has strong indicators suggesting an individual is intending to access their super illegally but the ATO cannot intervene to prevent it occurring. In other cases, individuals may have been misled by a scheme promoter to believe that early access to super through an SMSF is legal, and current regulatory requirements and processes are insufficient to warn the individual it is illegal and has significant consequences.
  - Examples of illegal early access through SMSFs include withdrawals of superannuation to pay for personal expenses such as credit card debt, buying a house or a car or other personal asset, or going on holiday.
  - The ATO currently estimates the size of illegal early release from SMSFs at around $250 million per year, and fairly stable post-COVID. Separately, prohibited SMSF loans were estimated to be around $400m in 2022-23 – a 40 per cent increase on the previous year's estimate.
- SMSFs are not currently required to have a unique bank account in the name of the SMSF. This means that regulators and transferring funds have limited ability to identify if the account being transferred to belongs to the SMSF trustee – creating a level of fraud risk that could easily be avoided with an additional control.
- SMSFs are required to prepare an investment strategy detailing its plan for investment and consideration of risk and liquidity considerations. However, it is not currently a requirement that this be completed prior to registration or in writing, meaning the strategy may not be prepared until after the SMSF has committed all of its investments.

Summary of impacts and methodology

Option	Benefits	Other costs	Net impact	Regulatory burden
Proposed: Enhancing consumer protections for SMSF establishments, and Realignment of the SMSF supervisory levy	Unquantifiable – the reforms aim to improve the protections for individuals at the SMSF establishment phase. This will have outcomes that range from preventing fraudulent rollovers to informing individuals to influence their decision to start an SMSF, especially where it is an inappropriate decision given their circumstances. The reforms will improve the likelihood of better retirement income outcomes, but the dollar value benefits of this additional protection cannot be estimated. The benefits are however important in light of the increasing use of SMSFs – for example with the number of SMSFs increasing from 550,000 in 2016 to 670,000 in 2026	Unquantifiable.	Unquantifiable.	$84.0 million over 10 years: 1. People: $80 million, or $8 million per year 2. Businesses: $4.1 million in one-off costs As the majority of this impact is on individuals (SMSF trustees), the regulatory burden is spread very broadly across a large population of new SMSFs – estimated at $133 per new SMSF in opportunity cost related to leisure time spent completing the additional training and making upfront payment of the levy.
Alternatives: Increase in compliance funding without corresponding increase in regulatory powers Independent auditor prior to establishment	Unquantifiable. Alternative options have been identified, however the benefits are similarly unquantifiable to above.	Unquantifiable.	Unquantifiable.	Not quantified. While ATO systems build costs may be lower for the alternatives identified, we expect the additional regulatory burden may be higher particularly in the auditor alternative where prospective trustees have an additional engagement with a professional that does not currently exist.

Economic and social impacts

Status quo	Proposed option
Assessment of existing economic impacts on: • **People –** Under the status quo, there can be a significant and lasting financial impact where individuals intentionally or unintentionally contravene their regulatory requirements in an SMSF. This can carry large penalties and tax impacts that will impact on a person's retirement outcomes. Where an SMSF is opened when not in the best interest of an individual, or to invest in inappropriate high-risk products, there is also a high risk of loss to retirement savings through high fees and investment losses. This includes a significant value of superannuation accessed illegally from SMSFs - \$252 million in 2022-23 – while the Shield and First Guardian collapse also involved individuals being pressured into high-risk investments through SMSFs. Illegal early access to super can occur through SMSFs because of the additional control over assets and investments in the SMSF environment compared to the APRA-regulated fund environment. • **Businesses –** Under the status quo, impacts related to SMSF regulations are mostly incurred by individual SMSF trustees rather than businesses. Industry and regulator intelligence suggest that many SMSFs are now established with the assistance of SMSF service providers that are relatively low-cost and place a low-administration burden on SMSF trustees themselves. • **Others –** N/A If the government does nothing, the status quo is unlikely to change. The ATO's regulatory powers limit its ability to expand compliance activities. **Stakeholder views:** Broadly speaking, SMSF stakeholders acknowledge that the advent of new technology and service providers has made it easy and quick for SMSFs to be established. This can mean SMSFs can be exposed to risk with limited regulatory oversight.	**Economic and social impacts on:** • **People –** The reforms may have large financial benefit for individuals that are prevented from inappropriately opening an SMSF. To the extent that the reforms preserve retirement savings from misconduct, there is a positive future economic benefit through extra retirement savings. There is also a positive fiscal benefit through reducing future reliance on the age pension. • **Businesses –** The reforms are not expected to have a material observable impact on growth, output, productivity or competition, as it impacts on the requirements for individual trustees rather than businesses. The reforms will however aim to disrupt the business model of certain scheme promoters, such as those that pressure individuals into inappropriate, high risk investments or mislead individuals into illegally accessing their super early through an SMSF. • **Others –** Unlikely to be a material economic or social impact elsewhere. If the reforms prevent instances of individuals losing all or large portions of their retirement savings to misconduct or fraud, this will have significant welfare benefits for those individuals that would be otherwise impacted. The introduction of mandatory training for new trustees may also improve the financial literacy for those entering the SMSF environment. **Stakeholder views:** Stakeholders will support that the reforms are targeted to uplift SMSF regulations to match existing best practice, have a limited impact on existing SMSFs and do not limit the inherent flexibility and choice of SMSFs.

Regulatory burden

Status quo	Proposed option
Assessment of any existing compliance and/or delay costs facing:	**Change in the regulatory burden for:**

Status quo	Proposed option
• **People –** Currently, the regulatory and compliance costs involved in opening an SMSF are fairly minimal, in part facilitated by new technology and SMSF service providers that help people to establish SMSFs. However, as a result of there being relatively light regulatory checks prior to registration, many SMSFs are established without a genuine intention to operate for the purpose of providing income in retirement. • **Businesses –** SMSFs are a type of private trust that individuals operate to provide retirement benefits for members, who are also trustees. Businesses do provide specialised support to individuals establishing an SMSF – notably financial advisers, accountants, and legal professionals. However, any costs associated with compliance and delays in current establishment and registration processes will be borne by the individuals seeking to establish an SMSF. • **Others –** N/A **Stakeholder views:** Regulator stakeholders are broadly in agreement that current regulator powers are insufficient to intervene in known instances where regulatory contraventions are likely to occur after registration. Industry stakeholders have also highlighted that low-cost SMSF service providers are able to facilitate the establishment of an SMSF quickly, with or without professional advice.	• **People –** The reforms introduce two new requirements that will result in additional time to individuals establishing an SMSF: 1. The new mandatory trustee training requirement: It is expected all trustees of new SMSFs undertake this new training, with an approximate time commitment of 3 hours. 2. Upfront payment of the levy: Previously, SMSFs paid the first year levy as part of the end-of-first year SMSF annual return process. There may be a slight additional time commitment as SMSFs have to organise for payment of the levy to a specified ATO account at prior to registration. It is assumed this additional time commitment is around 0.25 hours. The remainder of the reforms do not involve additional regulatory burden for SMSFs, but rather reinforce expected practice. That is, SMSFs already are expected to open a bank account for the SMSF, and already must prepare an investment strategy; while inputting details of an adviser and the cost of advice fees is not expected to be a material burden within the context of the establishment and registration process or tax return lodgement. The combination of these 2 additional requirements is expected to result in a per SMSF regulatory cost of around $133. As this is an impact on individuals not in the course of their employment or business operations, this leisure time is assumed to be the opportunity cost of the time spent completing the additional training and making upfront payment of the levy. For most new SMSF trustees, it is assumed that a genuine benefit is obtained over the course of the training by improving knowledge of the requirements and risks involved in having an SMSF. • **Businesses –** As noted under the status quo, businesses do not bear the compliance costs associated with reforms – as the reforms impose requirements on the trustees of SMSFs. However, businesses are expected to update procedures to ensure their advice and support of SMSFs takes account of new regulatory requirements: 1. Accountants that assist SMSFs are assumed to spend 2 hours understanding new requirements. 2. Financial advisers are assumed to spend 1 hour understanding new requirements. 3. Legal professionals are assumed to spend 2 hours updating guidance. • **Others –** There is not expected to be any material regulatory burden for other market or community participants. **Stakeholder views:** Stakeholders are expected to broadly support an uplift in the regulation to match existing best practice.

Other considerations and implementation

Other options have been considered, including:

1. Increasing resourcing for ATO compliance at the registration stage without corresponding updates to regulatory powers.

   While this option may have a lower systems build costs, an increase in resources for compliance without corresponding improvements to ATO powers is unlikely to be effective. This is because of the regulator's current limited ability to consider a variety of risk indicators when assessing an SMSF for registration. This means that even if compliance resources are able to be used identify more SMSFs for further investigation, the ATO may not have legal standing to prevent rollover in order to investigate.

2. Introducing a requirement for an independent audit of the SMSF at establishment, rather than the current requirement to conduct the audit for the end of year one SMSF annual return.

   This option has the benefit of introducing an independent third party into the establishment process. However, it likely has a larger additional cost to SMSF trustees and to the auditor industry to update processes to account for a new 'establishment' audit, which does not currently exist. As the auditor would likely be assessing the SMSF prior to any investment or use of the SMSF assets, it may be difficult for the 'establishment' auditor to ensure later contraventions are not committed.

What success looks like

The reforms target a wide range of behaviours and outcomes that cannot necessarily be captured by single metrics. Broadly, success will be reflected in positive momentum across the following areas:

- Reducing the rate of non-lodgement and late-lodgement of the SMSF annual return
- Reducing the incidence/value of illegal early access to superannuation through SMSFs, and prohibited loans from SMSFs
- Broadly reducing rates of non-compliance or contraventions with SMSF regulations
- Increasing general awareness of an SMSF's responsibilities
- Reducing the ease or incidence of SMSFs being used for fraud and abuse
- Improved information flow for regulators on participants in high risk rollovers or schemes.

Implementation approach

Implementation will be supported by existing ATO systems and processes:

- The ATO has an existing education training module for SMSFs that can be leveraged for training prior to registration. This module is currently used for education directed at existing trustees that have breached their regulatory obligations.

- The ATO does currently have an administrative system (the Superfund Lookup service) it uses to reflect the compliance status of an SMSF. This compliance status must be confirmed by a transferring fund before it can roll over funds to an SMSF. These systems will broadly be utilised alongside additional ATO powers to prevent rollovers while investigation occurs.

Evaluation will occur through ATO's regular monitoring and updates on SMSF annual return lodgements and 'failure to lodge' rates, illegal early access rates, and general intelligence sharing between Treasury and the ATO. No additional evaluations are needed.

Planned evaluation

No separate evaluation is proposed, as outcomes will be monitored through existing ATO reporting and intelligence mechanisms.

The ATO has a number of existing mechanisms through which it can track levels of non-compliance with regulatory obligations, including illegal early access from SMSFs and rates of non-lodgement of the SMSF annual return and non-payment of the annual levy.

Statement of Sufficiency

I confirm that this Dashboard Impact Analysis (IA) prepared for **Enhancing Consumer Protections for SMSF Establishments and Realignment of the SMSF Supervisory Levy** meets the requirements set out in the *Australian Government Impact Analysis Framework*.

I confirm that the level of analysis is proportionate to the policy issue being considered.

I note the Dashboard IA provides analysis of the impacts of the proposal using the 7 IA questions and:

- a high-level summary of costs and benefits and an estimate in the change in the regulatory burden, of the policy options under consideration
- high-level analysis of the policy option against the government's key strategic priorities
- a summary of relevant distributional effects and evidence of key stakeholder feedback incorporated into the policy design
- other details required to understand and assess the proposal.

Endorsed by
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