Super Consumers Australia

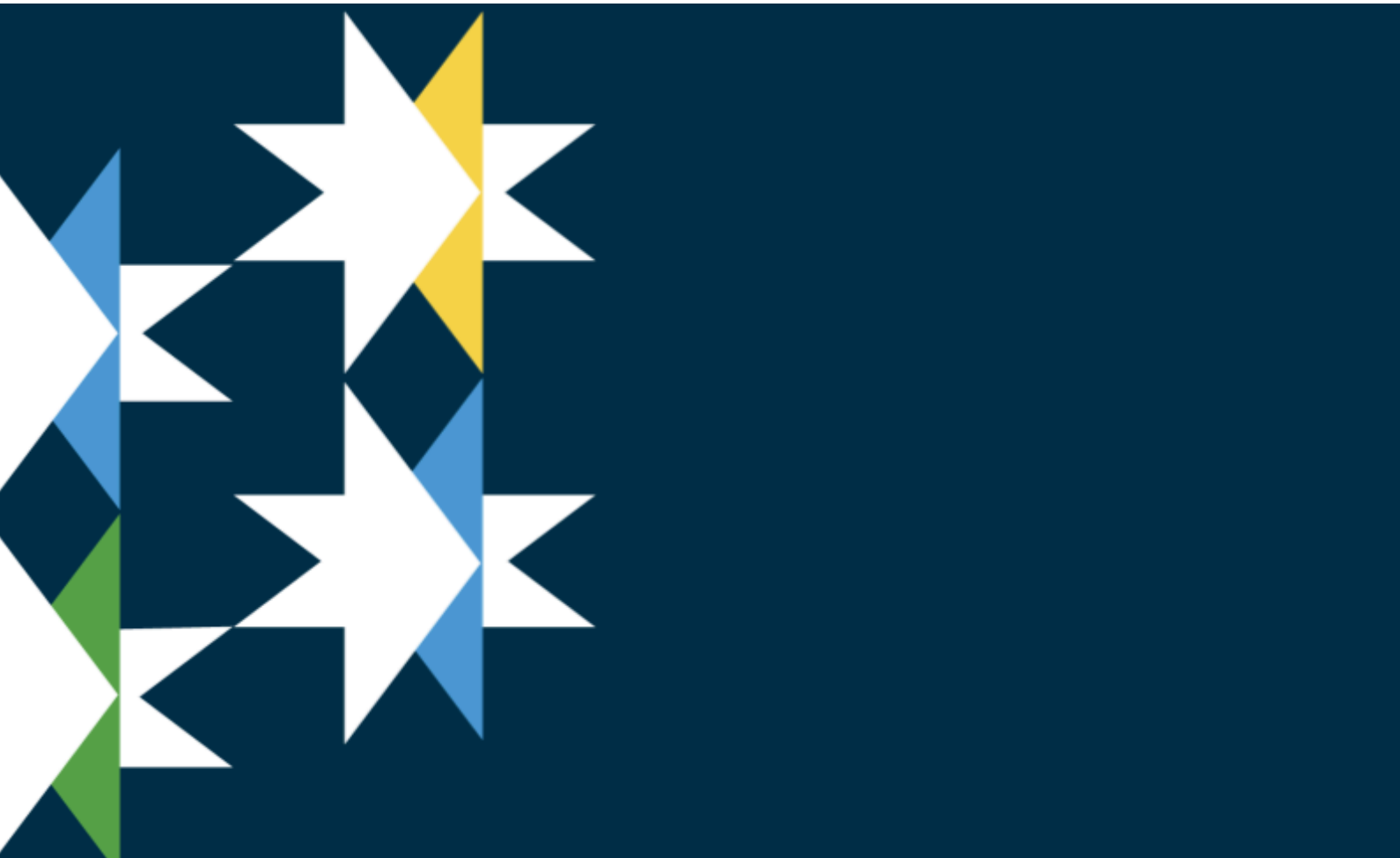
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Australian National Audit Office Performance audit

Australian Taxation Office's regulation of self-managed superannuation funds

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We encourage the ANAO to consider how the ATO could better use its role and powers relating to self-managed superannuation funds to support victim-survivors of high-risk switching into SMSFs, scams and fraud, and financial abuse, including coercive control.



Super Consumers Australia

Acknowledgement of Country

Super Consumers Australia acknowledges First Nations peoples as the traditional owners and custodians of Australia and we recognise their continuing connection to their lands and waters. We pay our respects to Elders – past and present – and generations of First Nations peoples now and into the future.

We recognise the value that First Nations peoples bring to our work as consumers, community leaders and partners in shaping a superannuation system that works for all peoples in Australia.

Super Consumers Australia supports the Uluru Statement from the Heart.

About us

Super Consumers Australia is the advocate for people on low and middle incomes in Australia's superannuation system. We were founded to fight for an accountable and fair super system that delivers great service and great financial outcomes in retirement. Based on deep research, we influence policymakers, hold super funds accountable, and help consumers maximise and manage their super. Formed in 2013, we are an independent, not-for-profit organisation and a leading voice for consumers of superannuation products and services.

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Introduction

Super Consumers Australia welcomes the opportunity to contribute to the ANAO's performance audit of the Australian Taxation Office's (ATO) regulation of self-managed superannuation funds (SMSFs).

We are particularly concerned about three harms that SMSFs can be used to facilitate:

- high-risk switching into SMSFs;
- scams and fraud;
- financial abuse, including coercive control.

The ATO's existing powers are broad in relation to SMSFs, but superannuation is not a priority for the ATO. The most important question for the ANAO is whether the ATO uses its powers in a way that recognises and responds to harm to consumers, rather than limiting its efforts to tax compliance.

It is difficult for us to answer this question because the ATO is not transparent about what it does or how it does it. We have limited visibility of how the ATO actually regulates these SMSF-related harms in practice. Where its approach is not publicly described, we ask the ANAO to examine it directly. In our view, that limited visibility is itself an issue relevant to the audit, as it is currently difficult for the public to judge whether the ATO's regulation is effective, and scrutinise what actions are being taken.

In response to the significant harm arising from the collapse of the Shield and First Guardian Master Funds, the Government recently proposed further SMSF protections, including new ATO powers to refuse a rollover at establishment. It will be important that the ATO uses those new powers effectively - and also that the ATO is seen to be using those powers effectively - to protect consumers.

We encourage the ANAO to consider how the ATO could better use its role and powers relating to SMSFs to support victim-survivors of high-risk switching into SMSFs, scams and fraud, and financial abuse, including coercive control.

Summary of recommendations

Recommendation 1: The ATO should develop clear purpose and vision statements which articulate and prioritise its role in the superannuation system as a service provider and consumer protection regulator.

Recommendation 2: the ATO should consider risks to SMSF members as a core risk within its SMSF regulatory role and build its enforcement, compliance and service strategies around supporting victim-survivors and holding perpetrators accountable.

Recommendation 3: The ANAO should assess whether the ATO has in place clear, documented referral and information-sharing arrangements with ASIC, the Tax Practitioners Board, APRA-regulated funds, relevant professional regulatory bodies and law enforcement sufficient to permit it to address harm caused by intermediaries.

Recommendation 4: The ATO should apply its Vulnerability Framework to SMSFs, including SMSF-specific procedures for detecting financial abuse, making referrals and supporting victims. The ATO should build on the family violence policy, specialist staff training and dedicated investigation capacity that community advocates have called for (see EARG, coerced directorships submission, 2025).

Recommendation 5: The ATO should regularly publish details about its enforcement activities and outcomes directed at protecting superannuation members and holding perpetrators of scams, fraud and financial abuse accountable.

The ATO must prioritise its role in superannuation

Despite the importance of super in the Australian economy - $4.8 trillion as of June 2026, $1.1 trillion of which is in SMSFs (source: APRA, June 2026 -, superannuation often feels like an afterthought to the ATO beyond tax collection.

The ATO's role in relation to superannuation is unique. Unlike its other obligations involving the collection of tax, which is necessarily adversarial, its role in superannuation includes a range of customer service and consumer protection functions: enforcing employer super guarantee obligations, reuniting lost super (including processing death benefit claims), the YourSuper performance comparison tool and data collection.

The ATO is also the primary regulator of SMSFs, which means that it is the organisation best placed to support people who have SMSFs weaponised against them (source: *Superannuation Industry (Supervision) Act 1993*, ss 5-6).

The ATO currently has no 'purpose' or 'vision' relating to its superannuation role. The ATO's purpose is to "collect tax so that government can deliver services for the Australian community" and its vision is "an Australia where every taxpayer meets their obligations because:

- complying is easy
- help is tailored
- deliberate non-compliance has consequences."

Source: ATO.

The ATO's laser-like focus on tax compliance impacts on its ability to engage in consumer protection functions and deliver services to customers. This is particularly the case for First Nations peoples (see e.g. our report summarising the challenges that First Nations people have engaging with the ATO to access their super: *Building Futures Not Barriers: Superannuation that works*, July 2025).

At a fundamental level, it is difficult for an organisation to do well at something it does not consider part of its purpose and has no vision for.

Recommendations

Recommendation 1: The ATO should develop clear purpose and vision statements which articulate and prioritise its role in the superannuation system as a service provider and consumer protection regulator.

The ATO must treat harm to SMSF members as a core regulatory risk

In an SMSF, members are usually also trustees (or the directors of a corporate trustee). There is no independent trustee standing between members and their savings, and no prudential supervisor monitoring the fund. SMSF members also lack many of the dispute resolution (AFCA) and compensation protections (CSLR, Part 23 compensation) available to members of APRA-regulated funds.

The ATO is therefore the main external safeguard for people who are pressured, deceived or coerced into an SMSF - people who are least able to protect themselves. It is critical that the ATO treat harm to SMSF members as a core regulatory risk it seeks to address through its work.

Recommendations

Recommendation 2: the ATO should consider risks to SMSF members as a core risk within its SMSF regulatory role and build its enforcement, compliance and service strategies around supporting victim-survivors and holding perpetrators accountable.

High-risk super switching

Over the past few years, there has been significant high-risk superannuation switching activity, driven in large part by lead generation. A common model involves people being persuaded to move their super out of an APRA-regulated fund and into an SMSF, where there is less regulatory oversight, making it easier for consumers to be switched into high risk investments that are not appropriate for them. Often consumers have modest balances and little understanding of an SMSF trustee's duties.

The goal of superannuation switching is usually to sell a product (a particular investment) or to sell services (financial advice, SMSF administration etc). In some cases, members are offered an opportunity to access their super before retirement (either legally or illegally). The member ends up taking on the costs, risks and legal liability of running a fund, often without realising it. The lead generator and the adviser earn substantial revenue from fees (some of which may be conflicted remuneration).

Anna's story

Anna (not her real name) was cold called by an advice firm offering a no-obligation super valuation. It took months for her to agree to switching.

"What followed was not a quick or impulsive decision. Over several months, close to six, I had multiple phone calls and meetings where we went through my existing super, my goals, and, importantly, my risk tolerance. I was very clear that I wanted low to medium risk. In every part of my life, I'm conservative and considered. I don't jump into things without thinking them through, and I tend to over-research rather than rush."

Source: Super Consumers Australia, *Enhancing member protections* submission, June 2026.

Anna's experience shows that harmful switching is not always a rushed, high-pressure sale. Lead generators and advisers build trust over months and undermine confidence in a person's existing fund. A single warning at the point of transfer may not be enough to stop it. As protections tighten in APRA-regulated funds, the same tactics are likely to be used to move people into SMSFs (see: Treasury, 2026).

Indeed, the ATO has said that most illegal early access involves newly established funds, often set up with the help of promoters who target people experiencing vulnerability (source: Deputy Commissioner Ben Kelly's speech at the SMSF Association's National Conference, 18 February 2026).

The ATO publishes warnings about schemes that target SMSFs and says it acts against promoters under the promoter penalty laws (source: ATO), though it has previously said that its role does not extend to determining whether an individual should set up an SMSF (source: Speech delivered by Assistant Commissioner Justin Micale at the CA ANZ National SMSF and Financial Advice Conference, 20 October 2022). It remains unclear:

- whether the ATO's registration risk assessment considers signs of harm, such as promoter or adviser involvement, whether the SMSF suits the person, or whether the person understands what they are entering into;
- how it identifies the advisers, accountants and promoters behind high-risk establishments;
- when it refers those facilitators to appropriate regulators, such as ASIC or the Tax Practitioners Board.

The Government has proposed empowering the ATO to prevent rollovers to new SMSFs in certain situations (source: Treasury, 2026). If adopted, how the ATO decides when to use this power will largely determine whether it protects members from high-risk switching. As reforms tighten protections in APRA-regulated funds, advisers engaged in harmful switching are likely to move clients into SMSFs, where no independent trustee scrutinises their advice or fees, making the ATO the main safeguard (see *Enhancing member protections submission*, June 2026).

Recommendations

Recommendation 3: The ANAO should assess whether the ATO has in place clear, documented referral and information-sharing arrangements with ASIC, the Tax Practitioners Board, APRA-regulated funds, relevant professional regulatory bodies and law enforcement sufficient to permit it to address harm caused by intermediaries.

Scams and fraud

In 2022, the ATO identified ID fraud and investment scams as an emerging risk in the SMSF space (source: Speech delivered by Assistant Commissioner Justin Micale at the CA ANZ National SMSF and Financial Advice Conference, 20 October 2022).

The ATO has a number of measures in place to detect fraud: the SMSF verification service, SMSF alerts, and a limited power to withhold registration. These measures are designed to stop unauthorised transactions, such as identity fraud, where someone moves a person's super without their knowledge. They offer much less protection where a scammer persuades a member to set up an SMSF and roll over their own super.

What is not answered by their published material is:

- what happens after fraud is detected;
- how the suspected fraud is investigated;
- how victims are supported through the process;
- how the ATO protects members who are deceived into authorising a rollover themselves.

Faye's story

Faye's (not her real name) former partner coerced her into applying for an ABN, then used it to make more than $100,000 in fraudulent GST claims. The ATO identified the fraud and agreed to pause debt recovery while it investigated him. But a month later, its systems automatically reported the debt to credit bureaus in Faye's name, saying she had not engaged with the ATO.

Source: Redfern Legal Centre case study, in Economic Abuse Reference Group, *Treasury Consultation on Combatting financial abuse perpetrated through coerced directorships* submission, December 2025.

Faye's experience shows how the ATO can either act to protect or further harm victims of fraud and scams. Even after the ATO recognised the scheme and its perpetrator, its systems continued to treat Faye as the debtor. It is not enough that the ATO detect harm, it needs to actually make things right by taking actions against the perpetrator and supporting the victim - not the other way around.

While the Government has committed to introducing legislation which would give the ATO broader powers to reassign or waive debts in situations like Faye's, it will need to develop a regulatory culture of consumer protection in order to effectively address abuse of its processes.

Financial abuse and coercive control

Most SMSFs are set up using a corporate trustee with members as directors. Perpetrators can pressure victim-survivors to move their super into an SMSF that the perpetrator effectively controls (e.g. by being the only signatory on the SMSF bank account).

Victim-survivors may not understand that they are being made directors or trustees or the obligations associated with those roles (see: *Super Consumers submission to the Consultation of the Second Action Plan*, July 2026). In some cases, the victim-survior is pursued for tax and penalties after the perpetrator has engaged in fraud or illegal early release of super from the SMSF (see: *Economic Abuse Reference Group joint submission to the Treasury Consultation on Combatting financial abuse perpetrated through coerced directorships*, December 2025).

Amy's story

> Amy's (not her real name) husband coerced her into signing documents without reading them. Sometimes he applied her signature electronically, using a fake email account he had set up in her name. A tax agent she had never met lodged returns on her behalf, and all refunds went to her husband's bank account. Only after he left the family did Amy start receiving notices, including penalties for a non-compliant SMSF she had not known existed.
>
> Source: UNSW Tax and Business Advisory Clinic case study, in Economic Abuse Reference Group, *Treasury Consultation on Combatting financial abuse perpetrated through coerced directorships* submission, December 2025.

The ATO has confirmed that in the case of an illegal early release, it cannot change tax outcomes (source: Deputy Commissioner Ben Kelly's speech at the SMSF Association's National Conference, 18 Feb 2026), which punishes the victim-survivor for a crime they did not commit. As noted above, the Government is currently consulting on reforms to address this (source: Treasury).

The ATO has said that it contacts all trustees and directors of new SMSFs it assesses as high-risk (source: Deputy Commissioner Ben Kelly's speech at the SMSF Association's National Conference, 18 Feb 2026). It is not clear how risk is assessed or how that process is conducted. There is no data available to show how many of these assessments have taken place, and what the consequences have been.

The ATO's Vulnerability Framework has no SMSF-specific measures and mentions financial abuse only in the Commissioner's foreword, as has already been highlighted in the EARG submission from December 2025. The ATO's published list of sanctions criteria does not mention coercion or abuse at all (source: ATO).

Recommendations

Recommendation 4: The ATO should apply its Vulnerability Framework to SMSFs, including SMSF-specific procedures for detecting financial abuse, making referrals and supporting victims. The ATO should build on the family violence policy, specialist staff training and dedicated investigation capacity that community advocates have called for (see EARG, coerced directorships submission, 2025).

The ATO needs to be transparent about its enforcement and compliance outcomes

The ATO's publicly available materials on SMSFs do not report what its regulatory actions achieve. Apart from the disqualified trustees register, information about enforcement emerges only occasionally, mostly through speeches made by ATO executives. There is no regular public information sharing on how the ATO identifies and responds to the harms discussed in this submission. This is in contrast to the much more robust reporting of its sister superannuation conduct regulator, ASIC (see: ASIC enforcement outcomes).

The ATO does publish outcomes of its compliance program for SMSF auditors, including how many reviews led to referrals to ASIC (source: ATO). The ATO relies heavily on SMSF auditors to ensure that annual financial returns - which are used to calculate tax liabilities - are accurate and reliable. This is yet another example of where the ATO prioritises its tax compliance role over its consumer protection role.

Without this transparency, consumers, advocates and decision makers cannot accurately judge if the ATO's regulation is effective.

Recommendations

Recommendation 5: The ATO should regularly publish details about its enforcement activities and outcomes directed at protecting superannuation members and holding perpetrators of scams, fraud and financial abuse accountable.

Summary of relevant resources

- Super Consumers Australia and Mob Strong Debt Help, *Joint submission: ATO engagement with First Nations taxpayers*, 8 September 2026
- Super Consumers Australia, *Submission: Review of the New South Wales coercive control laws*, 4 September 2026
- Super Consumers Australia, submission to the *Consultation on the Second Action Plan under the National Plan to End Violence against Women and Children 2022–2032*, 27 July 2026
- Super Consumers Australia, submission to Treasury consultation on *Enhancing member protections in the superannuation system*, 5 June 2026
- Super Consumers Australia, *Submission re: Combatting financial abuse perpetrated through coerced directorships*, 5 January 2026
- Economic Abuse Reference Group, submission to Treasury Consultation on *Combatting financial abuse perpetrated through coerced directorships*, 19 December 2025
- Super Consumers Australia joint report with Mob Strong Debt Help and Impact Economics and Policy, *Building Futures Not Barriers: Superannuation That Works*, July 2025