

File: 2026/24

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Policy, Analysis and Legislation
Law Design and Practice Group
Australian Taxation Office
Sydney NSW 2001
Via email: PAGSEO@ato.gov.au

To whom it may regard,

Draft Practice Statement Law Administration PS LA 2026/D1

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this response to the Australian Taxation Office (ATO) consultation on the Draft Practice Statement Law Administration PS LA 2026/D1 (*Administration of penalties for failure to comply with superannuation member account reporting obligations*).

About ASFA

ASFA, the voice of super, has been operating since 1962 and is the peak policy, research and advocacy body for Australia's superannuation industry. ASFA represents the APRA regulated superannuation industry with over 100 organisations as members from corporate, industry, retail and public sector funds, and service providers.

We develop policy through collaboration with our diverse membership base and use our deep technical expertise and research capabilities to assist in advancing outcomes for Australians.

We unite the superannuation community, supporting our members with research, advocacy, education and collaboration to help Australians enjoy a dignified retirement. We promote effective practice and advocate for efficiency, sustainability and trust in our world-class retirement income system.

ASFA Responses to Consultation Questions

- a) *Does the step-by-step approach of the draft Practice Statement strike an appropriate balance between clarity of outcomes and maintaining flexibility to take account of a super fund's individual circumstances?*

In relation to Appendix B, Paragraphs 90 (multiple false or misleading statements with a common source), ASFA notes that:

- The ATO should be amenable to classifying MATS / MAAS incidents based on systematic risk rather than on each individual member report, and in turn, assessing a fund for compliance penalties (if applicable) on this basis.
 - For example, if a 'time-out' event arises where MAAS is not submitted within 5 business days due to an administration system issue, a fund should not be penalised for each MAAS report that is impacted.
 - Instead, the issue as a whole should be considered by the ATO & funds should be afforded the opportunity to have penalties remitted where they are proactively engaging & disclosing to the ATO
 - This approach and expectation have recently been raised with the ATO as part of the consultation on Payday Super draft LCRs.

In relation to Appendix C, Paragraphs 154 (penalty is disproportionate to the severity of the failure to comply), ASFA notes that:

- The key item for superannuation funds to monitor is the Significant Global Entity (SGE) status & impact on penalties.
- In the context of event-based reporting, it would not be appropriate to impose penalties based on the SGE multiplied at the individual level for all errors contained in each member's event-based report.

- b) *Are the mitigating and exacerbating factors outlined at Step 3 in Appendix C to this draft Practice Statement representative of circumstances that may reasonably arise? Are there any additional mitigating and exacerbating factors that should be considered? Does the guidance on increasing or reducing the remission level appropriately reflect the impact or severity of those circumstances?*

In relation to Payday Super, ASFA notes the following:

- There will be an increased volume of transactions for MATS & MAAS will arise post 1 July 2026.

As such, the previously mentioned impacts on penalties and interest for individual event-based reporting is excessive for MATS & MAAS in light of the increased operational risks and processing volumes that will arise for Payday Super.

- The ATO should also apply a 12-month transitional approach to compliance during the first year of Payday Super, similar to the approach outlined in the PCG 2026/1 for employers¹.

In relation to governance frameworks, ASFA notes the following:

- More emphasis should be placed on the effective design and operation of control frameworks and third party governance arrangements that funds have in place as when considering mitigating factors.

In relation to Table 4, Appendix C (4-step penalty remission process), ASFA notes the following:

- The degree of attempt to correct systematic issues and lodge correctly within first three months of failure should result in 100% remission (currently 90% remission in the draft PSLA).
- Funds and external administrators often require this time to investigate, substantiate the issues, and implement solutions prior to being in a position to proactively engage and disclose to the ATO.

In relation to examples 1- 6 in Appendix D (Examples), ASFA notes the following:

- The examples demonstrate only significant compliance costs to funds via the ATO's proposed approach, while there has been no consideration in this same respect on assessing potential penalties and remission approach on a systematic issue basis.
- These costs are ultimately borne by members, which should also be considered.

c) Where a super fund becomes liable to penalties because of the actions of a third-party service provider, to what extent should the ATO take this into account when considering imposition and remission of penalties? Should it instead be treated as a matter to be resolved privately between the super fund and their service provider?

¹ ATO, 'Practical Compliance Guideline (PCG 2026/1) Payday Super - first year ATO compliance approach', ([28 January 2026](#))

ASFA submits the ATO could take this into account to be treated in the same way as other tax agents, given the third-party external service provider is acting as authorised agent to lodge event-based reporting on behalf of the fund.

Further, and In relation to Paragraph 115-123 (Reducing the base penalty amount for voluntary disclosure), ASFA notes the following:

- ASFA supports the approach to voluntary disclosure submissions, which are often made by funds or external administrators on behalf of funds, as a result of human or operational error outside the control of funds.

Additional remarks

In relation to Paragraph 78, Table 1 (Due dates for MAAS reporting), ASFA notes the following:

- The first scenario should be expanded to articulate that the 5 Business Days are from when a fund opens the account, rather than the 'Date Joined Fund' for the member.

For new accounts that are opened, funds must report the Date Joined Fund in the MAAS Account Status Date to the ATO, which the ATO use for the Date Joined Fund on ATO Online, yet this may be more than 5 business days from when the account was opened on registry.

In relation to Division 296 reporting, ASFA notes the following:

- There is the potential for the draft ruling to be applied beyond the MAAS and MATS reporting for which it is designed, including to obligations under the new Division 296 tax on superannuation balances above \$3 million.

The ruling is drafted around event-based reporting, where individual member-level events is reported to the ATO, with such reporting having standardised data and clear points of non-compliance.

Division 296 can be differentiated by its principles-based framework, requiring the attribution of fund level realised earnings to members on a fair and reasonable allocation based on industry available processes such as unit pricing and valuation methodologies.

This means the calculation of member Division 296 tax may vary, develop over time, and be subject to amendment. Applying the framework to Division 296 reporting obligations would create disproportionate outcomes, particularly where recalculations are required following amended tax returns or updates to methodologies.

Accordingly, the ruling should not be extended to apply to other reporting frameworks, and particularly the new Division 296 tax.

Closing remarks

We look forward to continuing to engage with you on these topics. To discuss any of these issues further contact ASFA Policy Manager Luke O'Donnell at lodonnell@superannuation.asn.au or on 0407 486 877.

Yours sincerely

A handwritten signature in black ink, appearing to read 'JKoval', is positioned below the text 'Yours sincerely'.

James Koval

Chief Policy & Advocacy Officer | ASFA – the voice of super

