



Self-managed superannuation funds illegal early access

How we estimate and address illegal early access to SMSFs.

Published 21 February 2024

Latest estimate and trends



Compare the 2020–21 illegal early access estimate to the previous year.

ATO action to address the risk



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Latest estimate and trends

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Illegal early access refers to assets being removed from a self-managed super fund (SMSF) early without a condition of release being met.

Superannuation savings are important to the community and provide funds for people's retirement; even a small amount of illegal early access can have a significant impact on an individual's retirement savings.

For 2020–21, we estimate SMSF illegal early access to be \$256.1 million.

Self-managed super funds

A SMSF is a way of saving for retirement. The members run it for their own benefit. They make the investment decisions for the fund and are held responsible for complying with the super and tax laws.

A SMSF must be run for the sole purpose of providing retirement benefits for the members. Additionally, all decisions made by members as trustee of their fund must be in the best financial interests of the members.

As at December 2023, there were 614,705 SMSFs with total estimated assets of \$913.7 billion.

About the estimate

The SMSF illegal early access estimate combines estimates for non-lodging and lodging funds. It forms part of our overall tax and super performance program, and measures the 'asset gap' between:

- what should be held in super, and
- what has been illegally accessed.

The illegal early access estimate was calculated in a similar way to other gap estimate amounts of taxes that are not collected. Find out

about the concept of tax gaps and the latest gaps available.

The 2020–21 SMSF illegal early access estimate of \$256.1 million has decreased compared to the 2019–20 estimate of \$380.5 million. Most of the decline occurred in the non-lodging funds.

This may be attributable to a range of factors, including:

- economic factors
- possible changes in compliance
- ATO actions.

Table 1 shows:

- Compared to the 2019–20 estimate, the 2020–21 estimate has materially reduced by about \$124 million, mainly due to a reduced estimate for the non-lodgers.
- The estimate as a percentage of total SMSF assets has reduced from 0.05% to 0.03%.
- Over these 2 years, the total assets have increased by \$123.2 billion.

Table 1: Illegal early access estimate

Element	2019–20	2020–21
Non-lodger population size	14,964	24,955
Non-lodger population illegal early access estimate (\$m)	283.0	174.4
Lodger population illegal early access estimate (\$m)	97.5	81.7
Combined illegal early access estimate (\$m)	380.5	256.1
Combined total assets (\$b)	720.5	843.7

Combined estimate as percentage of combined total assets	0.05%	0.03%
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Findings

Illegal early access is the most significant regulatory risk impacting the SMSF sector.

The estimate in both lodging and non-lodging funds is likely driven by a wide set of circumstances, such as:

- financial stress
- promoters and schemes
- lack of knowledge
- community attitudes to super.

The estimate for lodging funds is less than for non-lodging funds. This reflects enhanced controls, with these SMSFs being reviewed by approved auditors prior to lodgment.

The calculation estimates that 22.1% of the assets of SMSFs that never lodge have been early accessed. This contrasts with lapsed lodgers and lodgers, where the analysis showed only 0.44% and 0.01% respectively of assets leaving the system through illegal early access.

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ATO action to address the risk

How we support our clients to meet their superannuation obligations.

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We have a range of strategies and activities in place to reduce illegal early access, including:

- support and guidance products

- new registrant reviews
- removing SMSFs that fail to comply from SuperFund Lookup.

When new SMSFs are established, we engage with new trustees to:

- discuss their understanding of the obligations required as a trustee
- provide educational resources.

Where the risk of illegal early access cannot be mitigated, we withhold the ABN from SuperFund Lookup. This stops rollovers from occurring and prevents illegal early access. Individuals who illegally access their retirement savings can expect to:

- be audited
- be disqualified, as this is a serious breach of their trustee obligations
- pay additional tax, penalties and interest.

We also:

- have a strong focus on promoters of illegal early access schemes
- work with other law enforcement agencies to share intelligence and investigate inappropriate practices.

Sanctions can be severe, and include:

- the loss of professional licences
- civil penalties up to \$750,000
- criminal prosecution which can result in imprisonment of up to 5 years.

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Methodology

What method we use to calculate the estimate.

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We use a random enquiry program to calculate the estimate for non-lodging funds. The non-lodging funds population for a financial year is based on the date of last lodgment and rollovers from other super funds.

Separate random samples were drawn from SMSFs that had:

- previously lodged but failed to lodge in 2020–21 (lapsed-lodgers)
- a rollover in 2020–21, but never lodged (never-lodgers).

The estimate was calculated for each of these sub-populations.

The estimate for lodging funds is based on analysis of auditor contravention reports (ACRs) received from approved auditors for the corresponding financial year. The analysis focused on identifying illegal early access occurring in the contravention types where it was most likely to occur (payment standard breaches and loan-to-member contraventions). An audit non-detection amount was added to address the risk that approved auditors may not fully identify all instances of illegal early access.

We step through the non-lodging funds method application below and combine the estimates from the sub-populations in Table 2.

The method application for the lodging funds is laid out in Table 3.

Step 1: Determine if illegal early access occurred

Audits are conducted on the sample of SMSFs to determine if illegal early access occurred. Bank statements are reviewed to identify specific payments, and assets in the fund are compared to previous known values to identify unexplained reductions.

Step 2: Sum up individual illegal early access amounts

For lapsed-lodgers and never-lodgers, separately add up the individual illegal early access amounts where they are greater than zero and calculate the average.

Step 3: Multiply average illegal early access by population

For both lapsed-lodgers and never-lodgers, multiply the sample average illegal early access amount from Step 2 by the annual populations.

Step 4: Estimate non-detection

For lapsed lodgers, apply the other non-detection percentage to the result of Step 3.

Step 5: Combine population estimates

Add the lapsed-lodger and never-lodger population estimates (Step 3) and non-detection (Step 4) to give the total non-lodger population estimate.

Table 2 shows the dollar value at steps 1 to 5.

Table 2: Applying the non-lodging funds methodology

Step	Description	2019–20	2020–21
2.1	Lapsed-lodgers sample average illegal early access	\$4,322	\$2,688
2.2	Never-lodgers sample average illegal early access	\$65,074	\$31,666
3.1	Lapsed-lodgers multiply sample average illegal early access by population (\$m)	\$50.0m	\$58.5m
3.2	Never-lodgers multiply sample average illegal early access by population	\$220.5m	\$100.9m
4	Lapsed-lodgers non-	\$12.4m	\$15.0m

	detection		
5.1	Lapsed-lodgers estimated population illegal early access	\$62.5m	\$73.5m
5.2	Never-lodgers estimated population illegal early access	\$220.5m	\$100.9m
5.3	Non-lodgers estimated population illegal early access (5.1 plus 5.2)	\$283.0m	\$174.4m
n/a	Non-lodgers theoretical total assets	\$9,073.3m	\$17,304.1m
n/a	Non-lodgers estimate ratio to total assets	3.1%	1.01%

The never-lodgers sample average illegal early access is lower in 2021 due to sample illegal early access amounts typically being smaller than in 2020.

Table 3 shows the dollar value of the components of the estimate for lodging funds.

Table 3: Applying the lodging funds methodology

Item	Description	2019–20	2020–21
1	Estimated illegal early access from benefit payment contraventions	\$35.8m	\$30.0m
2	Estimated illegal early access from loans to members contraventions	\$39.5m	\$26.1m
3	Addition for non-detection	\$21.9m	\$25.6m
4	Lodgers estimate (1 plus 2 plus 3)	\$97.5m	\$81.7m

n/a	Lodgers theoretical total assets	\$711.5b	\$826.4b
n/a	Lodgers estimate ratio to total assets	0.01%	0.01%

Find out more about our research methodology, data sources and analysis for **creating our tax gap estimates**.

Limitations

The following caveats and limitations apply when interpreting this estimate:

- ACRs provide limited information on the events reported as contraventions.
- Unrectified contraventions that occurred in previous financial years can be reported in the 2021 ACR. The methodology included a calculation to exclude payments that occurred in previous years from the 2021 estimate.
- Approved auditors may not detect and/or not report contraventions.
- The methodology of the non-lodger estimate calculation excludes from the population SMSFs that ceased lodging prior to 2020.
- ATO audits may not detect all instances of illegal early access.
- Estimated non-detection amounts have been included to address identified limitations of the methodology.
- Non-reporting in ACRs may also occur because only contraventions that meet the reporting criteria need to be reported.

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Reliability

How we make sure the estimate is reliable.


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We have sought feedback and advice from our external and internal subject matter experts about how we calculate the estimate. Based on the advice and assessment, the reliability rating for this estimate is **medium** with a score of 18.

We have stratified the sampling process to ensure it is representative of the wider population.

We also engage with former Deputy President of the Administrative Appeals Tribunal, Mr Stephen Frost, for further assurance. He verifies the accuracy and quality of a sample of the audit results that underpin our estimate.

Figure 1: Reliability rating scale from very low to very high – SMSF illegal early access estimate

Figure 1: This image shows a graph that represents the reliability rating for the SMSF illegal early access estimate. The rating scale includes: - Very low which is a score between 0 and 10 - Low which is a score between 11 and 15 - Medium which is a score between 16 and 20 - High which is a score between 21 and 25 - Very high which is a score between 26 and 30. The graph shows the SMSF illegal early access estimate has a rating of 18, which is medium.

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