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Self-managed superannuation funds illegal early access

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Last updated 18 February 2026

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SMSF illegal early access estimate

Self-managed super fund (SMSF) 'Illegal early access' refers to assets being removed from an SMSF early without meeting a condition of release.

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

For 2022–23, we estimate SMSF illegal early access to be **$252.0 million**.

SMSFs estimate

An SMSF is a way of saving for retirement. Members run them for their own benefit. They make investment decisions for the fund and are responsible for complying with tax and superannuation laws.

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

In 2022–23, there were **598,564 SMSFs**, with an estimated **$921,212.0 million** in total assets (as of May 2025).

About the estimate

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

- what should be held in super, and
- what is held in super.

We calculate the estimate in a similar way to tax gap estimates. See Australian tax gaps – overview.

Comparison with previous years

The 2022–23 SMSF illegal early access (IEA) estimate of **$252.0 million** has increased, compared with **$250.1 million** in the 2021–22 estimate.

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

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

Table 1 below shows that:

- The 2022–23 estimate is about **$2 million** higher than the 2021–22 estimate.
- The IEA estimate as a percentage of total SMSF assets has remained stable at **0.03%**.
- Total assets have increased by **$78,212.0 million** since 2021–22.

Table 1: SMSF illegal early access of super estimates

Element	2019–20	2020–21	2021–22
Non-lodger population	14,964	24,955	25,627

size (with potential for IEA)			
Non-lodger population illegal early access estimate	$283.0 m	$174.4 m	$167.7 m
Lodger population illegal early access estimate	$97.5 m	$81.7 m	$82.3 m
Combined illegal early access estimate	$380.5 m	$256.1 m	$250.1 m
Combined total assets	$720,531.0 m	$836,560.0 m	$843,700.0 m
Combined estimate as percentage of combined total assets	**0.05%**	**0.03%**	**0.03%**

The overall reduction for non-lodgers has been driven by a significant decrease in the lapsed-lodger estimate, while the never-lodger component of the non-lodgers estimate has increased (see Table 2).

Findings

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

In both lodging and non-lodging funds, it is driven by a wide set of circumstances, including:

- 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 21.5% of the assets of SMSFs that never lodge have been early accessed. This contrasts with lapsed-lodgers and lodgers, where analysis shows only 0.18% and 0.01% (respectively) of assets leave the system illegally in these populations.

Total early access of $259.6 million consists of:

- estimated illegal early access of $252.0 million
- $7.6 million of legal early access, from
  - compassionate release
  - the first home super saver (FHSS) scheme.

Therefore, illegal early access is estimated to comprise around **97.1%** of total early access.

Prohibited loans estimate

As part of the IEA estimation process, we also estimate how much money has been accessed from SMSFs through prohibited loans. Prohibited loans are loans made to an SMSF member, their relative, or any related party that exceeds the in-house asset limit of 5%.

Prohibited loans are a similar non-compliance behaviour to IEA and also pose a significant risk to the SMSF system.

The prohibited loans estimate follows the same method as the IEA estimate. The estimate only includes prohibited loan withdrawals made

during the 2022–23 year and does not include outstanding amounts loaned in previous years.

For 2022–23, we estimate SMSF prohibited loans to be **$397.7 million**. The estimate has increased significantly compared with the 2021–22 estimate of $282.0 million.

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ATO action to address the risk of SMSF illegal early access

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How we reduce illegal early access

We have a range of strategies and activities in place to reduce illegal early access to super for self-managed super funds (SMSFs), including:

- support and guidance products
- new registrant reviews
- removing non-complying funds from Super Fund 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.

Illegal early access

Individuals who illegally access their retirement savings can expect to:

- be audited

- be disqualified as a trustee and have their names placed on public record, as this is a serious breach of their trustee obligations
- pay additional tax, penalties and interest.

We also specifically focus on SMSFs who register, rollover their super and then do not lodge their first annual return. We get data directly from financial institutions like banks to confirm if illegal early access has occurred.

Investigations and sanctions

In our investigations, we:

- strongly 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 $792,000
- criminal prosecution which can result in imprisonment of up to 5 years.

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Methodology for estimating SMSF illegal early access

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How we calculate the estimate

Non-lodging SMSFs

We use a random enquiry program to calculate the illegal early access estimate for non-lodging self-managed super funds (SMSFs).

The non-lodging fund population for a financial year is based on the date of last lodgment and rollovers from other super funds.

We drew separate random samples from SMSFs that had either:

- previously lodged but failed to lodge in 2022–23 (lapsed-lodgers)
- a rollover in 2022–23 but never lodged (never-lodgers).

We calculated an illegal early access estimate for each of these sub-populations.

Lodging SMSFs

We based the illegal early access estimate for lodging SMSFs on analysis of auditor contravention reports (ACRs) received from approved auditors for the corresponding financial year.

Our analysis focuses on identifying the most common illegal early access types (that is, payment standard breaches and loan-to-member contraventions). We add an audit non-detection amount to address the risk that approved auditors may not fully identify all instances of illegal early access.

Combining sub-population estimates

We step through the non-lodging funds method we applied below, and:

- combine the estimates from the sub-populations in Table 2
- lay out the method application for the lodging funds in Table 3.

Method

Step 1: Determine if illegal early access occurred

We conduct audits on the sample of SMSFs to determine if illegal early access has occurred. We review bank statements to identify specific payments. We compare assets in the fund to previous known values to identify unexplained reductions.

Step 2: Sum up individual illegal early access amounts

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

Step 3: Multiply average illegal early access by population

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

Step 4: Estimate non-detection

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

Step 5: Combine population estimates

We add the lapsed-lodger and never-lodger population estimates (Step 3) and non-detection (Step 4). This gives us the total non-lodger population estimate.

The following tables show the dollar values at Steps 1 to 5.

Table 2: Applying the non-lodging funds method

Step	Description	2019–20	2020–21	2021–
2.1	Lapsed-lodgers sample average illegal early access	$4,322	$2,688	$2,6
2.2	Never-lodgers sample average	$65,074	$31,666	$25,3

	illegal early access			
3.1	Lapsed-lodgers multiply sample average illegal early access by population	$50.0 m	$58.5 m	$58.9
3.2	Never-lodgers multiply sample average illegal early access by population	$220.5 m	$100.9 m	$83.2
4	Lapsed-lodgers non-detection	$12.4 m	$15.0 m	$25.6
5.1	Lapsed-lodgers estimated population illegal early access	$62.5 m	$73.5 m	$84.5
5.2	Never-lodgers estimated population illegal early access	$220.5 m	$100.9 m	$83.2
5.3	Non-lodgers estimated population illegal early access (5.1 plus 5.2)	$283.0 m	$174.4 m	$167.7
n/a	Non-lodgers theoretical	$9,073.3 m	$17,304.1 m	$19,950.9

	total assets			
n/a	Non-lodgers estimate ratio to total assets	3.1%	1.01%	0.8

The never-lodgers sample average illegal early access is higher in 2022–23 due to the sample illegal early access amounts typically being larger than in 2021–22.

Table 3: Applying the lodging funds method

Item	Description	2019–20	2020–21	
1	Estimated illegal early access from benefit payment contraventions	$35.8 m	$30.0 m	
2	Estimated illegal early access from loans to members contraventions	$39.5 m	$26.1 m	
3	Addition for non-detection	$21.9 m	$25.6 m	
4	Lodgers estimate (1 plus 2 plus 3)	$97.5 m	$81.7 m	
n/a	Lodgers theoretical total assets	$711,500.0 m	$826,400.0 m	$82
n/a	Lodgers estimate ratio to total assets	0.01%	0.01%	

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

Limitations

The following caveats and limitations apply when interpreting the illegal early access estimate:

- ACRs provide limited information on the events reported as contraventions.
- Unrectified contraventions that occurred in previous financial years can be reported in the 2023 ACR. The method included a calculation to exclude payments that occurred in previous years from the 2023 estimate.
- Approved auditors may not detect or not report contraventions (or both).
- The method of the non-lodger estimate calculation excludes from the population SMSFs that ceased lodging prior to 2022.
- ATO audits may not detect all instances of illegal early access.
- Estimated non-detection amounts have been included to address identified limitations of the method.
- Non-reporting in ACRs may also occur because only contraventions that meet the reporting criteria need to be reported.

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Reliability of SMSF illegal early access estimate

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We have sought feedback and advice from our external and internal subject matter experts about how we calculate the self-managed super fund (SMSF) illegal early access estimate. Based on the advice

and assessment, the reliability rating for this estimate is **medium** with a score of **16**.

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

We also engaged with former Deputy President of the Administrative Appeals Tribunal, Mr Stephen Frost, for further assurance. Mr Frost verified 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

The self-managed super fund illegal early access gap reliability rating is 16, which is medium in the ratings scale.

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