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Law Administration Practice Statement compendium – PS LA 2026/1

! Relying on this Compendium

This Compendium of comments provides responses to comments received on draft Law Administration Practice Statement PS LA 2025/D2 *Self-managed superannuation funds - education directions for contraventions of the Superannuation Industry (Supervision) Act 1993*. It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide you with advice or guidance, nor does it set out the ATO's general administrative practice. Therefore, this Compendium does not provide protection from primary tax, penalties or interest for any taxpayer that purports to rely on any views expressed in it.

Summary of issues raised and responses

All legislative references in this Compendium are to the *Superannuation Industry (Supervision) Act 1993* (SISA), unless otherwise indicated.

Issue number	Issue raised	ATO response
1	<p>As drafted, education directions could be applied to minor or inadvertent breaches, risking disproportionate outcomes. A minimum materiality threshold should apply to avoid directions for immaterial breaches or administrative oversights, particularly where the issue has been rectified.</p> <p>It is recommended that the final Practice Statement introduces a minimum materiality threshold to ensure directions are reserved for matters where mandated education is genuinely warranted. For minor or inadvertent breaches, voluntary education may be encouraged instead of a direction.</p>	<p>We consider that requiring a minimum materiality threshold to be satisfied for section 160 to be applied would unnecessarily fetter the legislative power conferred by the plain words of this provision. Neither the SISA nor the <i>Superannuation Industry (Supervision) Regulations 1994</i> (SISR) predicate the giving of an education direction on the basis of the materiality of the relevant contraventions.</p> <p>We further note that education directions are issued where the person's lack of knowledge or understanding of their obligations has contributed to a contravention of the SISA or the SISR. The intention of an education direction is to ensure the person acquires appropriate knowledge relating to the contravention that has occurred and to give them the opportunity to improve and refresh their overall knowledge of the superannuation laws, thus reducing the likelihood of contraventions being committed in the future. This is consistent with paragraphs 2.54 and 2.55 of the Explanatory Memorandum to the Tax and Superannuation Laws</p>

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		Amendment (2014 Measures No.1) Bill 2014 that inserted section 160 into the SISA.
2	<p>We strongly object to the reference to an 'accredited SMSF adviser' as a proxy for expected knowledge. This terminology indirectly targets a professional designation and should not appear in ATO administrative guidance.</p> <p>It is recommended that the final Practice Statement removes the reference to 'accredited SMSF adviser'.</p>	We note the feedback regarding the term 'accredited SMSF adviser'. The final Practice Statement adopts more generic terminology.
3	<p>The draft Practice Statement suggests the ATO may form a reasonable belief of a contravention based on an Auditor Contravention Report (ACR). An ACR reflects the auditor's assessment at a point in time and may not capture context, such as genuine grey-area technical interpretation.</p> <p>It is recommended that before issuing an education direction on the basis of an ACR, the ATO undertakes at least a light-touch review or trustee engagement to confirm facts and ensure procedural fairness, avoiding premature action.</p>	We confirm that a tax officer will seek to verify the contents of any ACR provided to us before we proceed to consider issuing an education direction. The wording in the final Practice Statement has been adjusted accordingly.
4	<p>We agree with the ATO's position that a direction cannot be issued to a person who is no longer a trustee or director at the time the ATO decides to act. However, this may allow a former trustee involved in a contravention to resign, avoid the education requirement, and later re-enter the system by establishing or joining another self-managed super fund (SMSF).</p> <p>It is recommended that the ATO implements system safeguards to identify individuals linked to prior contraventions if they seek to re-enter the SMSF system. This would support appropriate risk profiling of new trustees, helping maintain the integrity of the SMSF sector.</p>	We note this feedback and will ensure our profiling procedures give sufficient consideration to this risk.
5	<p>The draft Practice Statement notes that an education direction may not be appropriate if one has previously been issued. While we understand the intent to avoid over-reliance, a blanket position could remove a constructive compliance option. Several years may have elapsed since a prior direction, during which regulatory settings may have changed significantly.</p> <p>Alternatively, a subsequent breach may be minor or unrelated to the original issue.</p>	We do not consider that the draft Practice Statement prescribes a default approach that prevents the issue of a second education direction. If a person has previously been given an education direction, this is likely to indicate that is not appropriate to issue a second direction, but we do not consider this language completely precludes this as an option where other case-specific circumstances indicate it is appropriate.

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	It is recommended that the ATO retain discretion to issue a second education direction where it is the fair, proportionate and educative response, rather than defaulting to stronger compliance action.	
6	<p>The law does not prescribe a timeframe for completing an education direction. Accordingly, the ATO should avoid setting a default period capable of being read as the standard expectation. The draft Practice Statement states 28 days will 'normally' be reasonable; this should be positioned as a minimum, not the norm, noting peak compliance periods and personal circumstances.</p> <p>It is recommended that the final Practice Statement clarifies that 28 days is a minimum and adopts a more flexible standard range of 4 to 8 weeks, with a simple, accessible variation or extension process.</p>	<p>We consider that the draft Practice Statement provides adequate flexibility for a tax officer to determine a period to comply with an education direction that is reasonable in the circumstances.</p> <p>The draft Practice Statement specifies that a period of 'at least' 28 days to comply with a direction will normally be reasonable. This is merely setting a 'baseline' as a clear signal to ATO staff that no shorter timeframe is permissible. However, we accept this could be communicated more clearly. The wording in the final Practice Statement is now 'no less than' (rather than 'at least') and 'in most circumstances' (rather than 'normally').</p>
7	<p>Anecdotal feedback and research into trustee behaviour indicates historically low engagement with ATO-delivered education products, with trustees preferring independent, sector-led learning. When the law was introduced, it anticipated that 'other entities' could develop and deliver approved courses; however, this pathway now appears unavailable or unclear.</p> <p>It is recommended to restore the option for 'other entities' to provide approved courses, supported by published quality benchmarks and a transparent approval process to ensure independence, consistent learning outcomes and high-quality trustee education.</p>	<p>The draft Practice Statement is concerned with the circumstances in which an education direction should be given, rather than what constitutes an approved course of education determined in accordance with section 161. This is therefore out of scope for the purposes of this Practice Statement and commentary on this Issue will not be addressed.</p>
8	<p>Examples 1 and 2 of the Practice Statement should not have an education direction.</p> <p>The mentality in Example 1 is akin to requiring everyone with an issue with their home or car to get an education direction, even though they employed a tradesperson or mechanic to do the work.</p> <p>Example 2 is similar to requiring everyone who gets a traffic fine to undertake an education course.</p> <p>It feels like the ATO is targeting SMSF trustees for minor mistakes or technical breaches.</p>	<p>Regarding the feedback on Example 1 of the Practice Statement, we note that the primary responsibility for operating an SMSF rests with the individual trustees or directors of the corporate trustee, not their advisors. This is consistent with Logan J's observations in <i>Raelene Vivian, suing in her capacity as the Deputy Commissioner of Taxation (Superannuation) v Fitzgeralds</i> [2007] FCA 1602 at [21].</p>

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	<p>Many SMSF trustees run small businesses. Surely as a society we're better letting them grow their business and the economy, and have them able to rely on their accountant to comply with super legislation. Someone has to set up training courses which no doubt have to have someone at the ATO approve them.</p> <p>There may well be a place for an education direction, but the 2 examples are exactly what I was concerned would lead to an education direction.</p>	<p>Regarding the feedback on Example 2 of the Practice Statement, we reiterate our response to Issue 1 of this Compendium.</p> <p>Approved courses of education determined in accordance with section 161 are out of scope for the purposes of this Practice Statement and commentary on this Issue will not be addressed.</p>

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