24 April 2026

Attn: The Contact Officer
Superannuation and Employer Obligations
Australian Taxation Office

By email: PAGSEO@ato.gov.au

To whom it may concern,

Draft Practice Statement Law Administration PS LA 2026/D1 Administration of penalties for failure to comply with superannuation member account reporting obligations

Draft Practice Statement Law Administration PS LA 2026/D2 Administration of penalties for failure to comply with Single Touch Payroll reporting obligations

The Australian Bookkeepers Association, Chartered Accountants Australia and New Zealand, CPA Australia, the Institute of Certified Bookkeepers, the Institute of Public Accountants, the SMSF Association and The Tax Institute (together, **the Joint Bodies**) write to you as the peak professional accounting, bookkeeping, tax, financial advice and superannuation bodies in Australia. We welcome the opportunity to make a submission to the Australian Taxation Office (**ATO**) regarding its consultations on drafts PS LA 2026/D1 and PS LA 2026/D2 (**PS LA 2026/D1** or **PS LA 2026/D2** as appropriate, the **PS LAs**, or the **draft PS LAs**, as applicable). Our submission on both draft PS LAs are made together in this submission.

Our submission supports the ATO's stated objective of promoting timely and accurate reporting under both the superannuation member account reporting framework (Member Accounts Attribution Service and Member Accounts Transaction Service, or **MAAS/MATS**) and Single Touch Payroll (**STP**), and we welcome the transparency provided by the draft PS LAs. We recognise the critical role STP and MAAS/MATS play in the effective administration of the tax and superannuation systems and in ensuring appropriate outcomes for individuals who rely on that information. Consistent, well articulated administrative guidance from the ATO is important in providing certainty for employers, superannuation trustees, registered agents, and software providers operating in increasingly automated reporting environments.

However, we have significant concerns about the practical operation of the draft penalty frameworks in circumstances where errors arise from third-party administrators, payroll software or system-driven processes, and where penalties may scale on a per-member or per-payee basis. In these cases, a single underlying issue can give rise to consequences that are disproportionate to culpability, including in cases where there has been no impact on tax withheld and remitted to the ATO. Super fund penalties may ultimately be borne by individuals, including superannuation fund members. Accordingly, our submission focuses on the need for stronger proportionality and aggregation principles, clearer treatment of common-source errors, appropriate recognition of reasonable care in software-mediated reporting environments, and greater certainty around the operation of safe harbour, grace period and remission mechanisms.

Our detailed response to the draft PS LAs is contained in **Appendix A**.

If you would like to discuss any of the issues we raise in our submission, please contact Richard Webb, Superannuation Lead at CPA Australia, on 0425 726 889 or at richard.webb@cpaaustralia.com.au.

Yours faithfully,

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Appendix A

Introduction

We welcome the ATO's publication of two draft PS LAs intended to support consistent and transparent administration of penalties for non-compliance with (a) superannuation member account reporting (Member Accounts Attribution Service and Member Accounts Transaction Service, or **MAAS/MATS**) and (b) Single Touch Payroll (**STP**) reporting. We acknowledge the importance of timely and accurate reporting given its downstream impacts for individuals, the tax system, and superannuation outcomes.

It is clear that MAAS/MATS and STP reporting are key tools for ATO administration of the superannuation system including employer compliance with Superannuation Guarantee. We provide further feedback about this at the end of this submission.

Summary of key concerns

It is important to remember that where monetary penalties are imposed on superannuation trustees, regardless of whether the fault lies with trustees or third-party administrators, any penalties borne will be ultimately charged to members of the fund who are not to blame.

Further, we have significant concerns about the practical operation of the penalty framework in cases where:

- errors arise from third-party intermediaries (outsourced administrators, payroll software, and system transitions); and
- penalties can scale per member or per payee, potentially creating disproportionate outcomes where a single error affects large populations.

Accordingly, our submission focuses on proportionality and aggregation, safe harbour and outsourcing protections, and clarity of reasonable care and correction pathways (including grace periods and remission expectations).

These issues are particularly relevant in the context of the transition to Payday Super, where MAAS/MATS and STP reporting will play an expanded and interdependent role in monitoring employer compliance with Superannuation Guarantee obligations on a near-real-time basis.

Draft PS LA 2026/D1 (MAAS/MATS)

Safe harbour and outsourced administrator risk allocation (paragraphs 44–50)

Paragraphs 44-50 discuss the safe harbour provisions.

We are concerned by paragraph 48 which states that super funds engaging third-party administrators are not protected by the safe harbour unless the administrator is also a registered tax or BAS agent. The assumption that fund oversight extends to automated data feeds undertaken through largely ordinary data collection practices raises material compliance risks for trustees.

MAAS and/or MATS reporting for APRA-regulated funds is commonly delivered via specialised outsourced administrators. In practice, trustees may have limited operational control over day-to-day transmission mechanics, while still retaining legal accountability. Reporting is itself a largely automated process which is conceptually similar to data feeds existing across the economy in entities such as banks and stockbrokers, who rely on them to ensure that stakeholders, including the ATO, are made aware of taxable income from interest and realised capital gains. The penalty regime, based on the number of members affected, is capable of scaling materially depending on the size of different breaches, representing a significant risk to member financial interests in cases where fund members may be required to bear the cost of breaches.

Recommendation:

We recommend the ATO amend paragraphs 44–49 to provide a practical protection pathway for trustees where:

- the trustee is not eligible for the statutory safe harbour protection on the basis that the administrator is not a registered agent;
- the trustee has taken reasonable care in selecting, contracting, and overseeing the administrator; and
- the failure is attributable to the administrator's operational process rather than the trustee's governance failure.

At a minimum, the finalised PS LA should clarify how ATO decision-makers will treat these cases within the remission framework contained in paragraphs 54–58.

Proportionality where penalties scale per member (paragraphs 15–16; remission paragraphs 54–58)

Paragraphs 15–16 outline how the penalty liability applies at an individual member level and that a failure from one common source affecting multiple members may attract multiple penalties, with remission "particularly important" (see paragraph 16) in those cases.

Even with remission discretion, the penalty structure can produce outcomes perceived as excessive and disconnected from culpability where a single root cause produces widespread impact (for example, a system defect or administrator process failure). Due to the trust nature of superannuation, penalties levied on trustees are usually borne by members.

It is important to note that due to the scaling of penalties per affected member, the proportionality of penalties could rapidly become overwhelming due to a mass-impact scenario.

Recommendation:

We recommend that the final PS LA explicitly describes:

- how the ATO will identify and treat common-source errors due to a single root cause for penalty and remission purposes; and
- limiting principles to avoid "mechanical" outcomes (see also paragraph 153), consistent with the remission objective of "fair, just and proportionate" outcomes as explained in paragraphs 56–57 and the fairness headings in Appendix C to PS LA 2026/D1).

Grace period may be unavailable in practice (paragraphs 42–43)

Paragraphs 42–43 explain that although grace periods in respect of liability for false and/or misleading statements exist conceptually, none are prescribed, meaning funds cannot currently rely on grace period protection.

Recommendation:

We recommend the ATO:

- consider whether a practical correction window is appropriate for MAAS/MATS (especially for self-identified and promptly corrected errors); or
- alternatively, commit in the final PS LA to a clear remission approach for genuine correction activity, to encourage rapid remediation without fear of automatic penalty exposure.

Updating "importance" framing to reflect Division 296 dependency (paragraph 14)

Paragraph 14 lists the regimes that rely on MAAS/MATS data, including Division 293 and transfer balance cap administration, but does not mention Division 296.

Members of the Joint Bodies have flagged this omission and consider that Division 296 will increase the importance and sensitivity of fund reporting integrity.

Recommendation:

We recommend updating the final PS LA to reflect Division 296 reliance/interaction where relevant, to ensure the stated consequences accurately describe the operating environment.

Draft PS LA 2026/D2 (STP)

Voluntary STP reporting: avoid discouraging opt-in reporting (paragraphs 10–13)

Paragraphs 10–13 explain that entities are not liable for failing to report reportable employer superannuation contributions or reportable fringe benefit amounts (**RESC/RFBA**), or finalisation declarations via STP, but if they choose to do so and report inaccurately, they may incur false/misleading penalties. We consider that this disincentivises use of a service which benefits the public overall, and may be a productivity enhancement compared to communicating these through other services.

Recommendation:

Noting the comments in paragraph 13 regarding the status of child support amounts within the scope of the draft PS LA, we recommend clarifying how the ATO will apply proportionality/remission in contexts where employers opt-in to use STP to report certain amounts when it is not a requirement. The framework should not discourage voluntary reporting that benefits the system overall, while still imposing appropriate and proportionate consequences for misreporting.

Proportionality where penalties scale per payee and per statement (paragraphs 19–20 and 36)

Paragraphs 19–20 provide that penalties can apply per payee and scale with the number of impacted payees, and paragraph 36 contains an example where false and/or misleading statements may be counted per employee. The penalty regime does not differentiate between situations where multiple payees are affected due to a common-source failure and where multiple payees are affected due to different, unrelated reasons. We welcome the ATO's consideration of the particular importance that penalty remission consideration will play in these instances.

In mass-impact events, for example, incidents involving payroll software defects, standard configuration errors, or vendor update issues, this penalty structure risks disproportionate outcomes relative to culpability and may not improve STP data quality any more effectively than a targeted remediation program.

Recommendation:

We recommend that:

- the final PS LA explicitly set out how "common source" failures will be identified and managed; and
- the ATO strengthens the remission guidance to prevent penalty outcomes that are not "fair, just and proportionate" in systemic error scenarios.

Employer's withholding, payment and superannuation compliance not explicitly considered

A significant omission in PS LA 2026/D2 is the lack of explicit consideration of circumstances where an employer has:

- correctly withheld PAYG withholding amounts;
- remitted those amounts to the Commissioner on time;
- correctly paid employees their net wages or salary; and
- paid superannuation contributions on time and in full.

In these circumstances, the core fiscal and employee-protection objectives of the STP regime have been met. The remaining issue is one of reporting form, rather than tax compliance.

We consider that greater consideration should be given, at both the penalty application and remission stages, to whether the correct amount of tax and superannuation has been paid, with no detriment to the employee.

Recommendation:

We recommend PS LA 2026/D2 provide explicit consideration of whether there has been any impact on tax or superannuation paid and employees have been paid their correct amounts, in deciding whether a penalty should be applied.

STP reporting failure for a single pay cycle with no ongoing impact

PS LA 2026/D2 does not adequately address the situation where an employer:

- pays their employees their salaries, withholds and remits PAYG withholding amounts to the ATO;
- fails to lodge the STP report for that pay cycle on time; and
- lodges the STP report for the subsequent pay cycle on time.

Because STP is a year-to-date reporting system:

- the subsequent report will generally include correct cumulative amounts; and
- there is often no lasting impact on pre-fill, employee tax positions or tax and superannuation payments.

In such cases, we question whether a failure to lodge for one cycle truly creates the tax system mischief contemplated by the penalty regime. At a minimum, clearer guidance is needed to confirm that these circumstances strongly favour either:

- a decision not to apply a penalty; or
- a remission at an early stage of the 4-step remission process.

Recommendation:

We recommend PS LA 2026/D2 provide further guidance on single-cycle STP lodgement failures where later reporting corrects the position via year-to-date amounts.

False or misleading statements – mischaracterisation of allowances

PS LA 2026/D2 does not sufficiently distinguish between false or misleading statements that:

- distort tax or superannuation liabilities; and
- are purely classificatory, such as the mischaracterisation of allowances where total gross amounts, withholding and super are otherwise correct.

We submit that where:

- total remuneration is correctly reported;
- withholding outcomes for employees are unchanged; and
- no superannuation shortfall arises,

the mischief is materially different from cases involving under-reporting or deliberate misstatement.

PS LA 2026/D2 should acknowledge that where there is a mischaracterisation of allowances that has no tax or integrity impact, this should be a consideration in deciding whether a penalty should be assessed at all. Where a small business lodges their own STP report, there is a higher risk that the small business may make a mistake in the categorisation of the allowances paid to their employees as they may not understand the various nuances of some of the allowances under the various tax laws and *Fair Work Act 2009*.

Recommendation:

We recommend that PS LA 2026/D2 should clarify that pure mischaracterisation of allowances, without impact on tax or superannuation paid and the employee is paid the correct amount, generally weighs strongly against penalty assessment.

Special consideration should be given to the changes in payroll systems as employers make alterations to classify various items as Qualifying Earnings for Payday Super purposes.

Reasonable care in a software-mediated reporting environment (paragraphs 38–45)

Paragraphs 38–45 outline the reasonable care concept and note that higher standards may be expected in major events such as a transfer to a new payroll system.

In many payroll and super systems, it is not possible for employers and agents to see the exact data file that the software sends to the ATO. Therefore, it is not realistic or fair to expect them to thoroughly check or quality-assure every single software update or transmission, especially when:

- the payroll or administration system is run by a third-party vendor subject to commercial and proprietary considerations; and
- the system does not provide a clear, human-readable audit report showing precisely what was sent.

Recommendation:

We recommend the final PS LA:

- provides clearer examples of what constitutes reasonable care where an entity uses STP-enabled software in good faith, including baseline governance controls; and
- expressly recognises practical limits on what can be verified by end users, to avoid imposing *de facto* liability for vendor defects inconsistent with a "reasonable care" standard.

Grace periods and correction: ensure drafting supports prompt self-correction (paragraphs 46–47)

The grace period mechanism for false and/or misleading statement liability is set out at paragraphs 46–47, including Table 1 which quantifies the grace period for two scenarios where the original statement was made in relation to amounts paid to a person to whom the entity reasonably expects they will or will not pay amounts again within the same financial year.

Recommendation:

We recommend the final PS LA:

- clarifies how the grace period interacts with ordinary pay cycle corrections; and
- ensures the final wording does not inadvertently create confusion about whether a correction resets timeframes.

Issues applying to both draft PS LAs

Consistency with PS LA 2011/19 and PS LA 2012/4

We note that the draft PS LAs include consistent commentary with PS LA 2011/19 and PS LA 2012/4 around:

- the purpose of failure-to-lodge penalties as behavioural tools;
- the definitions of false, misleading and material particular;

- the focus on improving compliance rather than punishment; and
- recognition that penalties should not be applied without consideration of surrounding circumstances and should be subject to remission where outcomes are unfair, unjust or disproportionate.

However, as discussed further below, the draft PS LAs move towards a default presumption in favour of penalty application, without always adequately considering whether there has been any substantive tax mischief or tax/superannuation impact.

We also note that regarding the failure to report multiple events in STP or MAAS/MATS reports (because relevant payments have been made to multiple employees or members on the same day), the draft PS LAs provide that an ATO officer may apply multiple penalties for each record reported but in deciding to do so, should consider whether it is fair and reasonable to do so in totality, taking into account certain factors. PS LA 2026/D2 then states in paragraph 83 that it will generally not be fair and reasonable to apply multiple penalties in relation to STP reporting that was due on the same day if it is the first time the entity is receiving a penalty for failure to lodge their STP reporting.

We consider it unreasonable that a similar direction is not contained in PS LA 2026/D1.

In any event, this approach is different to the approach in PS LA 2011/19 which states the following rule under the heading, *5. When a failure to lodge penalty should be applied* (at the first dotpoint under "Generally the following rules also apply"):

> *[w]here multiple obligations are reported on the one document (for example, an activity statement) – [the ATO] will only apply one FTL penalty, although, at law, the entity is liable to a separate FTL penalty for each obligation.*

As the number of obligations in a STP report is based on the number of employees an employer has, we suggest that PS LA 2026/D2 could also include the same rule as PS LA 2011/19, for the failure to lodge one STP report so that a disproportionate penalty is not applied at first instance on a business simply because they have a large number of employees. An equivalent approach should apply in PS LA 2026/D1.

Recommendation:

We recommend that the PS LAs includes the same rule as PS LA 2011/19 for the failure to lodge one STP/MAAS/MATS report. That is, the ATO will only apply one FTL penalty, although, at law, the entity is liable to a separate FTL penalty for each obligation.

Comments on examples

Example 3 – failure to lodge by BigFund (PS LA 2026/D1) and BigCorp (PS LA 2026/D2)

Here we will discuss PS LA 2026/D2, however our comments relate to example 3 in both PS LAs: a $5 million penalty for the failure to lodge one STP report seems disproportionate to the behaviour resulting in the omitted report (their key personnel was sick) despite the fact the penalty was remitted from $41.25 million. The initial decision to apply a penalty in relation to each of the 5,000 employee payments, resulting in penalties of $41.25 million, is also unreasonable. Even though BigCorp is a large withholder, as STP is a year-to-date software reporting system, the STP report for the subsequent pay cycle would have the correct cumulative amounts reflected. As there is no impact on the tax payments withheld and remitted or superannuation paid in the example, $5 million penalty for one late STP report is a disproportionate outcome.

Recommendation

We recommend Example 3 in the PS LAs be reconsidered to provide a proportionate penalty outcome for the failure to lodge one STP report.

Example 6 – software provider error in both PS LAs

Example 6 in both PS LAs need further details to provide any real guidance. The example does not explain:

- what is reported incorrectly as a result of the software defect
- whether it was foreseeable by the employer
- whether the employer had reasonable governance processes in place to have detected the error.

Without these facts, it is difficult to understand how the penalty framework would be applied consistently or fairly.

The example also does not apply the 5-step process set out in the draft PS LAs. In particular, it does not:

- work systematically through reasonable care
- explain how remission would be considered
- assess the relevance of the software provider's fault as a mitigating factor.

Recommendation

We strongly recommend that Example 6 be expanded to clearly apply each step of the Draft PS LA and demonstrate how reliance on non-agent software providers is weighed in remission. It would be useful if the software error was based on a real-life scenario to provide better context.

Linking STP and MAAS/MATS data and Payday Super compliance

Given the imminent implementation of Payday Super on 1 July 2026, we consider that clearer and more practical guidance on Payday Super requirements is needed, in particular, how STP reporting should operate, whether within payroll systems or through separate reporting processes. This would help businesses better understand their obligations and support improved compliance outcomes.

Supporting understanding of STP and payroll interactions

We consider that many businesses would benefit from additional guidance on the relationship between payroll processes, STP reporting, and Payday Super. In particular, clearer explanation of how STP data is used alongside information from superannuation funds to support compliance would be helpful. We understand that the ATO intends to identify superannuation non-payment through a combination of employee superannuation fund data and STP data reported by businesses. However, this data matching process could be more clearly explained to businesses and advisers. Targeted education on reviewing STP setup, understanding reporting frequency, and aligning payroll processes with Payday Super requirements would support businesses and advisers to meet their obligations with confidence, and assist with correction of errors.

Compliance and education should come before penalties

We are of the view that the ATO should adopt a compliance and education-based approach rather than solely relying on penalties. This approach will be especially important while employers transition to the Payday Super environment. We suggest that the compliance approach referred to in PCG 2026/1 should also be a factor that is considered when applying penalties to employers for STP reporting non-compliance during the first 12 months of the Payday Super.

In addition, the profession continues to operate under significant pressure: more difficulty in accessing general interest charge (GIC) remission and the removal of GIC deductibility may compound this issue. Any delay whether caused by a third party, results in GIC automatically accruing, with no practical ability for advisers to prevent this.