

TAXATION

Election called for 18 May, Federal Parliament prorogued

Prime Minister has announced that the 2019 Federal Election would be held on Saturday, 18 May 2019.

Instant Asset Write-Off Bill with Budget changes is now law

The *Treasury Laws Amendment (Increasing and Extending the Instant Asset Write-Off) Bill 2019* has received Assent.

ATO to double audits of rental deductions

ATO has made rental deductions a top priority and warned that it will double the number of audits scrutinising rental deductions.

TPB implements 72-hour practitioner complaint resolution process

The Tax Practitioners Board has announced that from April 2019, it will implement a 72-hour practitioner complaint resolution process.

Security deposits: Court order to compel entity to provide security

An updated version of *Practice Statement PS LA 2011/14* (General debt collection powers and principles) has been released.

ATO clarifies how it administers announced tax cuts

Following media commentary, the ATO has issued a statement on how the ATO might administer tax cuts announced by the Government.

Increased Medicare levy low-income thresholds Bill is now law

The *Treasury Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2019*, that has received Assent, will increase the Medicare levy low-income threshold.

New Inspector-General of Taxation appointed

The Treasurer has announced the appointment of Ms Karen Payne as the Inspector-General of Taxation for a term of 5 years.

TPB terminates partnership and individual tax agent registrations

Tax agent registrations of a tax agent partnership and its supervising tax agent have been terminated by the TPB for overclaiming expenses on behalf of their clients.

Labor to support tax refunds, but not proposed tax rate changes

In his Budget-in-Reply address, Opposition Leader Bill Shorten confirmed Labor's support for proposed tax refunds, but not for the Coalition's tax reform plan.

Draft effective life of working dogs

The ATO has released for consultation draft effective life of working dogs. It proposes to add "Working dogs" to the Table B (general depreciating assets list).

Employee entitlements Bill receives Assent

A Bill to strengthen enforcement and recovery options regarding corporate misuse of employee entitlements and the Fair Entitlements Guarantee scheme has received Assent.

Measures (No 1) Bill 2019 receives Assent

The *Treasury Laws Amendment (2019 Measures No 1) Bill 2019* has received Assent, extending concessional rates of excise to craft brewers.

Household tax payments growing faster than income: Reserve Bank

With tax policy at the centre of the 2019 Federal Election campaign, the Reserve Bank has released the minutes of its monetary policy meeting.

Simplified WET attribution rules if contract has retention of title clause

The ATO has issued *Practical Compliance Guideline PCG 2019/3* on attributing wine equalisation tax where wine is sold under a contract containing a retention of title clause.

GST: Courier driver carrying on enterprise - ATO view on Qian case

ATO has released a Decision Impact Statement on the AAT decision in *Qian and FCT* regarding whether a courier driver was carrying on an enterprise for GST purposes.

GST-free supplies by endorsed charities for nominal consideration

Supplies made by endorsed charities are GST-free if they provide them for nominal consideration.

GST digital currency conversion determination

The ATO has registered the GST Digital Currency Conversion Determination 2019 (DCC 2019/1).

FINANCIAL SERVICES

Citigroup refund for losses on structured products

ASIC has reported that Citigroup will refund over \$3 million to 114 retail customers for losses arising out of structured product investments offered between 2013 and 2017.

Financial adviser banned for inappropriate super and insurance advice

ASIC has banned a financial adviser for 5 years for allegedly providing inappropriate super and insurance advice to clients and failing to act in their best interests.

Financial product design obligations: Bill receives Assent

A Bill has received Assent, introducing design and distribution obligations in relation to financial products and provides ASIC with a product intervention power.

CBA Financial Planning compensation final report released

ASIC has released the fifth and final report on CBA's financial advice compensation program under its additional licence conditions.

SUPERANNUATION

ASIC warns trustees about Protecting Super changes

ASIC has called on superannuation trustees to provide helpful and balanced communications to their members regarding the Protecting Your Super package.

SG amnesty recovers \$100m, despite not being law

The ATO has recovered around \$100 million in unpaid superannuation from employers since the 12-month Super Guarantee amnesty was proposed on 24 May 2018.

No SMSF audits for 5 years could mean cancelled auditor registration

Registered approved SMSF auditors are required to maintain their practical experience along with their continuous professional development.

Super Guarantee: Jockeys not employees of Qld racing authority

Federal Court has set aside SG assessments issued to the Racing Queensland Board after ruling that jockeys riding for centralised prize money were not employees of the Board.

APRA's new powers a "game changer" for super industry

APRA Chairman, Wayne Byres, has outlined APRA's priorities in an opening statement prepared for a hearing before the Senate Economics Legislation Committee.

Super Member Outcomes Bill becomes law

A Bill has received Assent, giving APRA more powers to deal with underperforming super funds.

Commissioner's new power to direct employers to pay SCG

ATO has issued an updated version of PS LA 2011/18 (Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts).

REGULATOR NEWS**APRA to adopt "constructively tough" enforcement approach**

APRA has released its new Enforcement Approach setting out how it will use its enforcement powers to prevent and address serious prudential risks.

ASIC enforcement update

ASIC has released its enforcement update for July to December 2018 reporting it had resolved 56 financial services-related outcomes during this period.

Super fees charged to members: APRA/ASIC ask trustees to review

In a letter to RSE licensees, APRA and ASIC asked all super trustees to review their oversight of fees and other charges paid to third parties such as financial advisers.

ASIC fairness imperative outlined at Budget Estimates

ASIC Chair, James Shipton, has outlined the "fairness imperative" for the financial services industry in his opening statement to Budget Estimates.

TAXATION

Election called for 18 May, Federal Parliament prorogued

The Prime Minister has announced that the 2019 Federal Election would be held on Saturday, 18 May 2019. The Election will be for the House of Representatives and half the Senate.

As a result, Federal Parliament has been prorogued by the Governor-General until Saturday, 18 May 2019 (as proclaimed in [Gazette C2019G00344](#)). The House of Reps has been dissolved, meaning that all Bills that have not yet been passed by both Houses of Parliament have now lapsed.

Instant Asset Write-Off Bill with Budget changes is now law

The [Treasury Laws Amendment \(Increasing and Extending the Instant Asset Write-Off\) Bill 2019](#) (introduced as Treasury Laws Amendment (Increasing the Instant Asset Write-Off for Small Business Entities) Bill 2019)) has received Assent. The Bill was passed by the Senate to implement the changes announced in the 2019-20 Federal Budget. As originally introduced, the Bill amends the tax law to increase the threshold below which amounts can be immediately deducted under these rules from \$20,000 to \$25,000 from 29 January 2019 until 30 June 2020, and extend by 12 months to 30 June 2020 the period during which small business entities can access expanded accelerated depreciation rules (instant asset write-off). The Senate amendments to the Bill implement the Government's 2019-20 Budget changes so that the write-off is extended to medium-sized businesses (turnover up to \$50 million), where it previously only applied to small business entities and the instant asset write-off threshold increases from \$25,000 to \$30,000. The threshold applies on a per asset basis, so eligible businesses can instantly write off multiple assets.

Small business entities (ie those with aggregated annual turnover of less than \$10 million) will be able to immediately deduct purchases of eligible assets costing less than \$30,000 that are first used, or installed ready for use, from Budget night (ie 2 April 2019) to 30 June 2020. Medium-sized businesses (ie, those with aggregated annual turnover of \$10 million or more, but less than \$50 million) will also be able to immediately deduct purchases of eligible assets costing less than \$30,000 that are first used, or installed ready for use, from Budget night to 30 June 2020. The concession will only apply to assets acquired after 2 April 2019 by medium-sized

businesses (as they have previously not had access to the instant asset write-off) up to 30 June 2020.

ATO to double audits of rental deductions

The ATO has [warned](#) that it will double the number of audits scrutinising rental deductions. Assistant Commissioner Gavin Siebert says that this year, the ATO has made rental deductions a top priority. "A random sample of returns with rental deductions found that nine out of 10 contained an error. We are concerned about the extent of non-compliance in this area and will be looking very closely at claims this year," he said.

Mr Siebert also said that the ATO expects to more than double the number of in-depth audits this year to 4,500, with a specific focus on over-claimed interest, capital works claimed as repairs, incorrect apportionment of expenses for holiday homes let out to others, and omitted income from accommodation sharing.

TPB implements 72-hour practitioner complaint resolution process

The Tax Practitioners Board (TPB) [has announced](#) that from April 2019, it will implement a 72-hour practitioner complaint resolution process. When the Board receives a complaint from a client of a tax practitioner, it will assess the complaint. If the complaint is suitable for a referral, the TPB says it will be subject to the following process:

1. The complaint will be sent to the tax practitioner.
2. The tax practitioner must engage with the complainant directly.
3. The tax practitioner must endeavour to resolve the complaint within 72 hours.
4. The tax practitioner must notify the TPB of the outcome.

Security deposits: Court order to compel entity to provide security

An updated version of [Practice Statement PS LA 2011/14](#) (General debt collection powers and principles) has been released. The Practice Statement has been amended to refer to the Commissioner's new power to seek a Federal Court order requiring an entity to comply with a security request.

This power is in s 255-115 of Sch 1 to the Taxation Administration Act 1953 (introduced by the Treasury Laws Amendment (2018 Measures No 4) Act 2019 with

effect from 1 July 2018). Failure to comply with a court order is a strict liability offence, punishable by a penalty of \$10,500 and/or imprisonment for 12 months.

ATO clarifies how it administers announced tax cuts

There have been comments in the media on how the ATO might administer tax cuts announced by the Government. Following media commentary, the ATO has issued a statement as follows:

"... we would like to clarify that in respect of announced tax cuts, while we do need law change there are also things we can do administratively. For example, if the Labor party agrees to support the Coalition tax cuts as announced, then we would be able to update the tax withholding schedules, to allow the tax cuts to be reflected in people's take home pay. However, we could not issue assessments based on the tax cuts until these are passed into law. If the law for these tax cuts passes after June, we could also retrospectively amend assessments to provide the tax cut once the law is passed."

Increased Medicare levy low-income thresholds Bill is now law

The [Treasury Laws Amendment \(Medicare Levy and Medicare Levy Surcharge\) Bill 2019](#) has received Assent as Act 29 of 2019. It had passed all stages without amendment. As announced in the 2019-20 Federal Budget, it amends the *Medicare Levy Act 1986* and the *A New Tax System (Medicare Levy Surcharge - Fringe Benefits) Act 1999* to increase the Medicare levy low-income threshold for singles to \$22,398 for 2018-19. For couples with no children, the family income threshold is \$37,794. The additional amount of threshold for each dependent child or student is \$3,471.

For single seniors and pensioners eligible for the seniors and pensioners tax offset (SAPTO), the Medicare levy low-income threshold is \$35,418 for 2018-19. The family threshold for seniors and pensioners is \$49,304, plus \$3,471 for each dependent child/student.

New Inspector-General of Taxation appointed

The Treasurer [has announced](#) the appointment of Ms Karen Payne as the Inspector-General of Taxation for a term of 5 years. Ms Payne will commence in the position on 6 May 2019.

Ms Payne is the inaugural Chief Executive Officer of the Board of Taxation and a member of the Board of Taxation. She is also a member of the Australian Reinsurance Pool Corporation. Previously, Ms Payne was a partner with Minter Ellison specialising in corporate and international tax, with extensive experience managing complex tax related matters across the financial services, property, mining, energy and utilities sectors.

TPB terminates partnership and individual tax agent registrations

The tax agent registrations of a Wollongong tax agent partnership and its supervising tax agent have been terminated by the Tax Practitioners Board (TPB) for overclaiming expenses on behalf of their clients. The ATO identified the agent's behaviour through its compliance activities and conveyed its concerns to the TPB for further action. The TPB [said](#) it found that the partnership breached the Code of Professional Conduct that applies to all registered tax agents by failing to provide tax agent services competently. This includes showing intentional disregard to taxation laws and advice by the ATO and repeatedly making claims for his clients without substantiation or merit.

The TPB said adverse comments were made by the AAT against the agent in several appeals that the partnership had lodged on behalf of its clients between 2010 and 2014. The AAT proceedings related largely to overclaimed expenses. In thoroughly investigating the matter, the TPB said it found that the agent's advice to clients resulted in claims that were subsequently disallowed, including: personal training and school fees claimed as training and conference expenses; personal training sessions claimed by a sales agent; depreciation on a household fridge claimed by a plumber; and claiming family pets as guard dogs. TPB CEO, Mr Michael O'Neill, said the agent's conduct did not accord with the TPB's view of what constitutes a fit and proper person.

Labor to support tax refunds, but not proposed tax rate changes

In his 2019 [Budget-in-Reply address](#) on 4 April 2019, Opposition Leader Bill Shorten confirmed that: "... from 1 July [2019] - If you earn between \$48,000 and \$126,000 - no matter who you vote for in May - you will get the same tax refund. But the Liberal

tax plan does not do enough for 2.9 million Australians who earn less than \$40,000.” He also said that Labor would not support the Government’s proposed further tax rate changes that would, from 2024-25, see only 3 personal income tax rates – 19% (for incomes up to \$45,000), 30% (for incomes between \$45,000 and \$200,000) and 45% (for incomes over \$200,000).

In a joint media release with Shadow Treasurer Chris Bowen on 4 April, Mr Shorten said that Labor would “support the increase to the Low- and Middle-Income Tax Offset (LMITO) proposed in the Budget [so the Budget LMITO changes for incomes up to \$126,000 would go ahead] and will deliver tax relief from July 1 this year. But the Liberals’ unfair Budget leaves 3.6 million Australians earning less than \$48,000 a year short-changed. To give these workers the tax cut they deserve, Labor will increase the offset for low-income and part-time workers.” He went on: “Under Labor’s changes, which will apply from the 2018-19 financial year, workers earning up to \$37,000 a year will receive a tax cut of up to \$350. For workers earning between \$37,000 and \$48,000 a year, the value of the offset will increase up to the maximum offset of \$1,080.”

Draft effective life of working dogs

The ATO has released for consultation [draft effective life](#) of working dogs. It proposes to add "Working dogs" to the Table B (general depreciating assets list). Working dogs include certified therapy dogs, detection dogs, guard dogs, performing dogs, police dogs and security dogs, but excluding assistance dogs, pet dogs, racing dogs, support dogs, and working dogs used in primary production.

The proposed list of effective life determinations will apply to assets purchased (or otherwise first used or installed ready-to-use) on or after 1 July 2019. Comments are due by 30 April 2019.

Employee entitlements Bill receives Assent

The [Corporations Amendment \(Strengthening Protections for Employee Entitlements\) Bill 2018](#) has received Assent – Act No 45 of 2019.

The Bill amends the *Corporations Act 2001* to: (i) strengthen enforcement and recovery options to deter and penalise company directors and other persons who engage in, or facilitate, transactions that are aimed at preventing, avoiding or significantly reducing employer liability for employee entitlements in insolvency; (ii) enable the recovery of unpaid employee entitlements of an insolvent company from

certain entities in limited circumstances; and (iii) enable ASIC to disqualify company directors and other officers (either directly or on application to the Court), where they have a track record of corporate contraventions and inappropriately using the Fair Entitlements Guarantee scheme to pay outstanding employee entitlements.

Measures (No 1) Bill 2019 receives Assent

The [*Treasury Laws Amendment \(2019 Measures No 1\) Bill 2019*](#) has received Assent, and together with the *Excise Tariff Amendment (Supporting Craft Brewers) Bill 2019* extends concessional rates of excise to craft brewers. Schedule 4 includes changes to the First Home Super Saver (FHSS) scheme and minor GST amendments for the notification by suppliers of resident premises.

Note that the measure proposing to increase the SMSF membership limit from 4 to 6 was removed from the Bill by the Government and did not proceed into law. The Government said it continues to support an increase in the SMSF membership limit and will seek progress at a later time.

Household tax payments growing faster than income: Reserve Bank

With tax policy at the centre of the 2019 Federal Election campaign, the Reserve Bank has [released](#) the minutes of its monetary policy meeting held on 2 April 2019 offering this insight: "Members observed that tax payments by households had been growing noticeably faster than income growth in recent years, partly because of efforts to increase tax compliance."

RBA Board members also noted that overall GDP growth from government spending on the NDIS, health, aged care and infrastructure "had been negative because of slow growth in some other forms of government expenditure and strong growth in tax revenues".

Simplified WET attribution rules if contract has retention of title clause

The ATO has issued [*Practical Compliance Guideline PCG 2019/3*](#) on attributing wine equalisation tax (WET) where wine is sold under a contract containing a retention of title clause. The Guideline allows qualifying sellers to simplify the attribution of WET by treating the time of sale as occurring in the month after GST is attributed.

This means that monthly lodgers can attribute the WET payable in the month after the wine is attributed for GST purposes. Quarterly lodgers can attribute the WET payable to the next tax period if the wine is supplied in the last month of the quarter. PCG 2019/3 replaces Practice Statement PS LA 2013/1 (GA), which set out the same simplified attribution method. Date of effect: 17 April 2019.

GST: Courier driver carrying on enterprise - ATO view on Qian case

The ATO has released a [Decision Impact Statement](#) (DIS) on the AAT decision in *Qian and FCT* [2019] AATA 14. In that case, the AAT held that a courier driver was carrying on an enterprise for GST purposes, rather than working as an employee. The ATO's decision to cancel his GST registration was therefore set aside.

The DIS says that determining whether a worker is an employee or independent contractor is highly factually dependent and requires the consideration of many factors. The decision of the AAT was open to it on the facts and evidence before it, which it observed was opaque in certain important respects. However, the ATO says that it does not accept that the AAT decision is authority for the proposition that the fact that a worker supplies his or her own vehicle is a matter that always or generally is to be given decisive or predominant weight in assessing whether a worker is an independent contractor or employee. Comments are due by 10 May 2019.

GST-free supplies by endorsed charities for nominal consideration

Supplies made by endorsed charities are GST-free if they provide them for nominal consideration. An endorsed charity must be registered with the Australian Charities and Not-for-Profits Commission (ACNC), and must also be endorsed by the ATO to access these GST charity concessions. The ATO [says](#) an endorsed charity will make a supply for nominal consideration where the consideration received satisfies any of the following tests:

- less than 75% of the GST-inclusive market value for supplies of accommodation;
- less than 50% of the GST-inclusive market value for supplies other than accommodation.

This information is designed to enable the charity to compare the consideration received for a supply against benchmark market values to determine whether the organisation's supplies are made for nominal consideration. An endorsed charity can also use the cost of supply test which is where the supply is less than 75% of the cost to the endorsed charity for supplying something, the ATO said.

GST digital currency conversion determination

The ATO has registered the [GST Digital Currency Conversion Determination 2019](#) (DCC 2019/1). The determination sets out the method to convert amounts of consideration that are expressed in digital currency into Australian currency for the purposes of working out the value of a taxable supply for the purposes of s 9-85(1) of the GST Act. An entity must report the GST payable for taxable supplies in Australian currency on its activity statements. Basically, an entity must convert any amount of consideration expressed in digital currency using the formula: *Amount of digital currency x your particular exchange rate on the conversion day*.

"Your particular exchange rate" is a digital currency exchange rate obtained from a digital currency exchange, or digital currency website, or the agreed rate between the supplier and the recipient, whichever the taxpayer has chosen. The "conversion day" is the date that the digital currency is converted into Australian currency. Date of effect: The GST Determination commences on 13 April 2019 (ie the day after it was registered).

FINANCIAL SERVICES

Citigroup refund for losses on structured products

ASIC has [reported](#) that Citigroup will refund over \$3 million to 114 retail customers for losses arising out of structured product investments offered between 2013 and 2017. Citigroup will also write to over 1000 customers remaining in the products to provide them an opportunity to exit early without cost. ASIC said it investigated Citigroup's sale and provision of general advice to customers for fixed coupon structured products, which are complex, capital at risk products tied to the performance of reference shares.

ASIC was concerned that while Citigroup considered its financial advisers to be providing general advice, elements of its practice may have led some customers to believe that Citigroup was providing personal financial advice, for which there are higher obligations and disclosure requirements. From 1 January 2018, Citigroup ceased selling structured products to retail clients under a general advice model. ASIC said Citigroup will contact affected customers and remediation will be completed by 10 September 2019.

Financial adviser banned for inappropriate super and insurance advice

ASIC has [banned](#) a financial adviser for 5 years for allegedly providing inappropriate super and insurance advice to clients and failing to act in their best interests. ASIC conducted surveillance of the Queensland-based adviser while he was an authorised representative of 2 AFS licensees.

It allegedly found that he had failed to take into account his clients' actual circumstances when providing advice. Instead, ASIC said he obtained limited information and made a series of assumptions about their personal circumstances. ASIC further alleged that the adviser recommended new superannuation and insurance products to his clients without considering their existing products and services.

Financial product design obligations: Bill receives Assent

The [*Treasury Laws Amendment \(Design and Distribution Obligations and Product Intervention Powers\) Bill 2018*](#) has received Assent, introducing design and distribution obligations in relation to financial products and provides ASIC with a product intervention power.

Date of effect: While the ASIC intervention power commences on 6 April 2019, the design and distribution obligations will be phased in over 2 years

CBA Financial Planning compensation final report released

ASIC has released the fifth and final report on CBA's financial advice compensation program under its additional licence conditions. The final report ([REP 613](#)), prepared by KordaMentha Forensic, shows that CBA has offered a total of \$9.3m to customers whose advice was reviewed as a result of the licence conditions imposed by ASIC. ASIC imposed these additional conditions on the AFS licences of CBA's Commonwealth Financial Planning Ltd and Financial Wisdom Ltd, with the consent of the licensees in August 2014. KordaMentha Forensic was appointed as an independent expert to monitor the licensees' compliance with the additional licence conditions.

ASIC said it took this action because the licensees did not apply review and remediation processes consistently to customers of 15 financial advisers, disadvantaging some customers. The additional licence conditions required that CBA offer compensation for inappropriate advice that caused financial loss (where

applicable) and offer affected customers up to \$5,000 to get independent advice from an accountant, financial adviser or lawyer. KordaMentha Forensic has produced 5 reports since the licence conditions took effect.

SUPERANNUATION

ASIC warns trustees about Protecting Super changes

ASIC has called on superannuation trustees to provide helpful and balanced communications to their members regarding the Protecting Your Super package (PYSP) of reforms, which are due to take effect on 1 July 2019. These reforms were implemented by the [*Treasury Laws Amendment \(Protecting Your Superannuation Package\) Act 2019*](#) and Regulations (registered on 5 April 2019). The changes seek to prevent retirement savings from being eroded by inappropriate fees and insurance premiums, as well as reducing unintended multiple low-balance accounts. Fund members with balances under \$6,000 whose accounts have been inactive for 16 months will have their accounts paid to the ATO and consolidated into an active account of the member.

ASIC warned trustees that it may take action in relation to any misleading communications regarding the implementation of these reforms. ASIC Commissioner Danielle Press said it is not appropriate for trustees to encourage all members to maintain insurance as many members with inactive accounts will be better off allowing their insurance to lapse. Similarly, trustees should not be urging all members with low-balance accounts to keep their account within the fund, as this may not be in their best interests. See also the consumer information on the ASIC MoneySmart website.

SG amnesty recovers \$100m, despite not being law

The ATO has recovered around \$100 million in unpaid superannuation from employers since the 12-month Super Guarantee amnesty was proposed on 24 May 2018. At a Senate Economics Legislation Committee [*hearing on 10 April 2019*](#), ATO Deputy Commissioner, Superannuation, Mr James O'Halloran, estimated that there has been a 10-15% increase in the number of employers that have come forward and self-reported unpaid SG liabilities in response to the SG amnesty, despite it not yet being law.

The amnesty was announced by the Government on 24 May 2018 to enable employers to self-correct historical underpayments of SG amounts until 23 May 2019 without incurring additional penalties that would normally apply. Importantly, a tax deduction would be allowed for payments of the SG charge made during the amnesty which would normally be non-deductible. As at 28 February, Mr O'Halloran said 19,000 employers have come forward within the normal super guarantee charge (SGC) process for reporting unpaid SG contributions. The ATO believes that the vast majority (93%) are small to medium businesses. Around 85% of the total declaration of the non-payment or the payment of SG (including nominal interest), is less than \$50,000, Mr O'Halloran said.

No SMSF audits for 5 years could mean cancelled auditor registration

Registered approved SMSF auditors are required to maintain their practical experience along with their continuous professional development (CPD). Under the *Superannuation Industry (Supervision) Act 1993*, ASIC can cancel the registration of an SMSF auditor who hasn't performed any significant audit work for a continuous period of 5 years. The ATO says this is because they may no longer have the practical experience necessary to audit SMSFs.

The [ATO has advised](#) that it will be writing to about 100 SMSF auditors who haven't been reported as the auditor on an SMSF annual return in the past 5 years and asking them to show why they believe they still have the necessary practical experience to audit SMSFs. The ATO will also request evidence that they've met their CPD and professional insurance indemnity (PII) requirements. SMSF auditors who can't demonstrate they've maintained their practical experience or who fail to provide evidence of their CPD and PII requirements may be referred to ASIC, the ATO said.

Super Guarantee: Jockeys not employees of Qld racing authority

The Federal Court has set aside superannuation guarantee assessments issued to the Racing Queensland Board after ruling that jockeys riding in Queensland for centralised prize money were not employees of the Board: [Racing Queensland Board v FCT](#) [2019] FCA 509, Federal Court, Logan J, 12 April 2019. The Racing Queensland Board (the Board) is the principal racing authority for Queensland under the Australian Rules of Racing and the Queensland Local Rules of Racing. The ATO issued to the Board default assessments of the Board's superannuation guarantee shortfall (and of the SGC payable on the shortfall), on the basis that the Board had

failed to make superannuation contributions for jockeys who rode races in Queensland between 1 July 2009 and 30 September 2014.

The ATO relied on s 12(8)(a) of the SGAA, which provides that "a person who is paid to perform or present, or to participate in the performance or presentation of, any ... sport ... is an employee of the person liable to make the payment". In Queensland (and other jurisdictions) jockeys are paid by the Board under a Centralised Prizemoney System. The Federal Court has held that the Board was not liable to pay riding fees to jockeys in terms of s 12(8)(a) of the SGAA and therefore jockeys were not employees of the Board. The Court decided that the person legally liable to pay the riding fee was at all times the owner or trainer who had employed or engaged the jockey under a discrete contract.

APRA's new powers a "game changer" for super industry

APRA Chairman, Wayne Byres, has outlined APRA's priorities in an [opening statement](#) prepared for a hearing before the Senate Economics Legislation Committee. While the hearing never proceeded after the Prime Minister called the Federal Election for 18 May 2019, APRA released the prepared statement anyway. For the superannuation sector, Mr Byres said that APRA is commencing a major drive towards increased industry transparency as part of its ongoing push to lift standards and ensure trustees put their members' interests first. APRA has also announced plans to enhance the consistency and granularity of the superannuation data it collects, especially for choice products. More of this data will be made publicly available, and easier to interpret, to help members make informed decisions about who to entrust with their retirement savings, Mr Byres said.

APRA has also flagged its broader agenda for superannuation, focused on lifting trustee board capability, developing a stronger fiduciary culture and tackling conflicts of interest. Mr Byres welcomed APRA's new directions power following the enactment of the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Act 2019*. It also gives APRA the power to take civil penalty action against trustees and their directors for breaching their obligations to members, including the duty to act in the best interests of members. Mr Byres said these new powers are a "game changer" for APRA, and it is preparing to use them to put pressure on underperforming trustees to lift their game or exit the industry.

Super Member Outcomes Bill becomes law

The [*Treasury Laws Amendment \(Improving Accountability and Member Outcomes in Superannuation Measures No 1\) Bill 2017*](#) has received Assent, giving APRA more powers to deal with underperforming super funds. It also replaces the "scale test" with an "outcomes test" to require super trustees to undertake an annual determination of member outcomes.

The Bill also implements 2 recommendations by the Banking Royal Commission dealing with civil penalties for breaches of the trustee's covenants and employer kickbacks on default super funds.

Commissioner's new power to direct employers to pay SCG

The ATO has issued an updated version of Practice Statement [PS LA 2011/18](#) (Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts).

Practice Statement PS LA 2011/18 now includes (at Annexure G) an overview of the Commissioner's new power to direct an employer to pay a superannuation guarantee charge liability or an estimate of that liability. An employer who fails to comply with the Commissioner's direction by the due date risks a monetary penalty (up to \$10,500) and/or jail time (up to 12 months).

REGULATOR NEWS

APRA to adopt "constructively tough" enforcement approach

APRA has released its new [Enforcement Approach](#) setting out how it will use its enforcement powers to prevent and address serious prudential risks, and hold entities and individuals to account. APRA said it will adopt a "constructively tough" appetite to enforcement and be less patient with the time taken by uncooperative entities to remediate issues. It will also be more forceful in expressing specific expectations, and prepared to set examples using public enforcement to achieve general deterrence. This new enforcement appetite comes into effect immediately, said APRA Chair, Wayne Byres.

APRA's new Enforcement Approach is founded on the results of its Enforcement Review, which was also published. The review, conducted by APRA Deputy Chair,

John Lonsdale, found that APRA could achieve better outcomes by taking stronger action earlier where entities were not cooperative or open. To remain effective, the review said APRA should be more willing to use the full range of its formal powers - such as direction powers and licence conditions - to achieve prudential outcomes and deter unacceptable practices.

ASIC enforcement update

ASIC has released its enforcement update for July to December 2018 ([REP 615](#)). In the 6 months to 31 December 2018, ASIC said it resolved 56 financial services-related outcomes, and had 15 criminal and 66 civil financial services-related matters underway as at 1 January 2019. Looking forward, ASIC said it will be focused on enforcement. The *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*, which has received Assent, improves ASIC's enforcement toolkit and will allow it to pursue harsher civil penalties and criminal sanctions against those who have broken the law.

While the enforcement statistics are a relevant measure of ASIC's success, what it wants to achieve is a substantial improvement in culture and conduct, being the willingness to act efficiently, honestly and fairly, Mr Crennan said. In terms of ASIC's enforcement priorities for 2019, ASIC said it is focusing on:

- potential harms from technology driven by the growing digital environment and structural changes in financial services and markets;
- poor culture and professionalism in financial services and credit, particularly in the provision of consumer credit and financial advice;
- culture, governance and incentives that can harm markets;
- practices that target financially vulnerable consumers; and
- misalignment of retail product design and distribution with consumer needs.

Super fees charged to members: APRA/ASIC ask trustees to review

In a [letter](#) to RSE licensees, APRA and ASIC asked all superannuation trustees to review their oversight of fees and other charges being deducted from their members' accounts for payment to third parties such as financial advisers. This follows revelations from the Banking Royal Commission of cases where financial advice fees were being charged without the provision of the relevant services, ie fees-for-no-service conduct. APRA/ASIC said all trustees must have in place strong governance, risk management and oversight processes to ensure that only authorised and appropriate fees and other charges are deducted from members' accounts. To this

end, the regulators expect all trustees to review the robustness of their existing arrangements by 30 June 2019.

The APRA/ASIC letter outlines a range of oversight issues that trustees need to consider in relation to the deduction of financial advice fees. For example, are the deductions explicitly authorised by members? Have services been provided? Is the deduction consistent with the sole purpose test? APRA/ASIC also expressed concern about situations where trustees have determined it appropriate not to pursue financial advisers for compensation for their members. This practice may represent a breach of the SIS payment standards, APRA/ASIC said.

ASIC fairness imperative outlined at Budget Estimates

ASIC Chair, James Shipton, has outlined the "fairness imperative" for the financial services industry in his [opening statement](#) to Budget Estimates. While the Banking Royal Commission has finished, Mr Shipton said ASIC is working to maintain the momentum for reform and improvement in the financial services sector. ASIC also called on financial institutions to embrace and embed in everything they do concepts of fairness for there to be meaningful cultural change in the industry.

Mr Shipton also welcomed the additional \$400m of funding given to ASIC that will be used to:

- give effect to its "Why not litigate?" enforcement strategy, and significantly increase the number of cases it can pursue, and accelerate the speed of court-based enforcement outcomes;
- use the full extent of its new powers and penalties;
- embed and expand its new supervisory approaches; and
- play a part in implementing the Government's package of reforms and new obligations and responsibilities for ASIC following the Royal Commission. This includes a proposed expanded role for ASIC to become the primary conduct regulator in superannuation, Mr Shipton said.