

SMALL BUSINESS

Welcome to business.gov.au

The Government has introduced a newsletter, encompassing an array of topics of interest for small business and business in general.

TAXATION

Individuals tax gap 6.4%; 80% of tax agent returns adjusted

ATO has released figures on net income tax gap for individuals, and incidences of adjustment of tax returns.

Tax Avoidance Taskforce expanded to private groups

ATO has advised the Tax Avoidance Taskforce has been expanded to private groups and high wealth individuals.

Retirement income review: Treasury consultation paper

Treasury has released a consultation paper as part of the Government's Retirement Income Review.

ATO grants two months deferral for bushfire victims

ATO has announced it will grant a two-month lodgement and payment deferral to taxpayers affected by recent bushfires in NSW and Queensland.

Proposed draft rulings: employee transport; trust splitting

ATO has updated its matters for consultation including proposed draft rulings on employee transport expenses and trust splitting.

ATO urges small employers to make the switch to STP

ATO is urging small employers who haven't made the switch to Single Touch Payroll to get in touch if they need help to transition.

Tax fraud: don't share myGov passwords

Tax Practitioners Board has warned against sharing myGov passwords and highlighted a recent case of identity crime.

Centrelink robo-debt changes for income reviews

Department of Human Services has announced it will make changes to how it uses details from the ATO in online income compliance reviews.

ATO disclosure of protected information: deceased estates

ATO has released an exposure draft on the remedial power to disclose protected information by taxation officers.

High Court refuses to quash lower court decisions

High Court has refused to make an order quashing a Full Federal Court judgement upholding amended assessments for the 2006 to 2013 income years.

ATO appeals Addy backpacker decision

Commissioner has appealed to the Full Federal Court against the decision concerning a working holiday maker.

Jail terms for GST property fraud

ATO has revealed that two separate developers have been sentenced to jail terms for GST fraud.

FINANCIAL SERVICES

AFS licensees get three-year exemption from ASIC compliance

ASIC has suspended an instrument that obligates AFS licensees to ensure their financial advisers are covered by an ASIC-approved compliance scheme.

AFS licensees must ensure advisers comply with FASEA code

ASIC said it will take a facilitative approach to compliance with the FASEA code of ethics until the new single disciplinary body is operational.

ASIC bans adviser for SMSF property advice

ASIC has banned a Victorian financial adviser for six years for advice provided in relation to property investments by SMSFs.

Westpac facing civil penalty for millions of AML/CTF breaches

AUSTRAC has commenced civil penalty proceedings against Westpac for over 23m alleged contraventions of AML/CTF Act.

SUPERANNUATION

ATO to contact SMSFs without unique bank account

ATO has advised that it will contact SMSF trustees that do not have a unique bank account for super payments in early 2020.

Sole purpose test: update compliance approach

ATO has updated its website guidance to confirm its compliance approach to the sole purpose test for SMSFs investing in the DomaCom Fund.

ATO looking to reunite \$20.8bn in lost super

In a recent conference, ATO Deputy Commissioner outlined what ATO is doing to inform taxpayers about lost and unclaimed super.

Insurance within super for low-balance accounts

APRA has released guidance on the requirement for RSE licensees to cease providing insurance within super on an opt-out basis.

Proposed revisions to APRA standard: insurance

APRA has released its proposed reviews to prudential standard SPS 250 aimed at helping trustees select the most appropriate insurance policies for members.

Choice of super fund and enterprise agreements Bill

A Bill has been introduced in the House of Reps that proposes to extend the super choice of fund regime to employees covered by enterprise agreements.

REGULATOR NEWS

New ASIC powers Bill introduced

A bill has been introduced in the House of Reps to give ASIC new powers for licensing, search warrants, banning orders, and penalties re AFS licensees.

APRA's approach to governance and culture

APRA has released an information paper setting out its plans to lift standards of governance, culture, remuneration and accountability across industries.

Super business performance reviews: APRA guidance finalised

APRA has finalised its prudential practice guide SPG 516 on business performance review and released its response to industry submissions.

APES 205 Conformity with Accounting Standards and APES 315 Compilation of Financial Information to align with the restructured Code

APESB issues - The APESB website has been updated with the following content, APES 205 Conformity with Accounting Standards (effective from 1 January 2020) and APES 315 Compilation of Financial Information (effective from 1 January 2020).

APESB issues guidance on prohibitions related to Public Interest Entities and audit partner rotation requirements in Australia

The Accounting Professional and Ethical Standards (APESB) has issued two resources to assist with the implementation of the restructured *APES 110 - Code of Ethics for Professional Accountants (including Independence Standards)* which comes into effect from 1 January 2020 [Technical Alert](#).

SMALL BUSINESS

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TAXATION

Individuals tax gap 6.4%; 80% of tax agent returns adjusted

The [ATO says](#) its best estimate of the net income tax gap for individuals in 2015-16 is 6.4%, or \$8.4 billion. In other words, for this fiscal year, the ATO estimates that individual taxpayers have contributed 93% of the estimated tax payable. The ATO's latest gap estimate covers a three-year period from 2013-14 to 2015-16.

The ATO's random enquiry programs for 2013-14 to 2015-16 saw 1,403 reviews undertaken across a representative sample of the individuals not in business population. The ATO said it sampled 992 tax returns prepared by a tax agent, and 411 returns prepared by a person themselves. Overall, the incidence of adjustment of tax returns was 75% - the ATO said it adjusted 80% of agent-prepared returns, compared to 61% for self-preparers.

Tax Avoidance Taskforce expanded to private groups

The [ATO has advised](#) that the Tax Avoidance Taskforce has been expanded, and it is increasing its focus on supporting and ensuring private groups and high wealth individuals pay the right amount of tax. [The Taskforce was established in 2016 to ensure multinational enterprises, large public and private businesses (and associated individuals) "pay the right amount of tax in Australia". The Government funded the Taskforce with \$679 million over four years in 2016. In the 2019-20 Federal Budget, the Government provided a further \$1 billion over four years from 2019-20 to extend the operation of the Taskforce to 2022-23.]

The ATO now has three Tax performance programs for private groups:

- Top 500 private groups program expands the ATO's Top 320 program, focusing on Australia's largest private groups.

- High wealth private groups program.
- Medium and emerging private groups program.

The ATO says if tax agent clients are a part of these programs, it will send agents a notification letter soon, detailing what they and their clients need to do to prepare for the ATO's engagement with them.

Retirement income review: Treasury consultation paper

Treasury has released a [consultation paper](#) as part of the Government's Retirement Income Review which is seeking to establish a fact base on the operation of the current retirement income system. The review is being conducted by an independent panel chaired by Mr Michael Callaghan.

As recommended by the Productivity Commission, the review is investigating the "three pillars" of the retirement income system, being: (i) the means-test Age Pension; (ii) compulsory superannuation; and (iii) voluntary savings (including home ownership). The Treasury paper sets out 23 consultation questions, for example:

- What factors should be considered in assessing the fiscal sustainability of the current settings (eg tax concessions, contribution caps, and Age Pension means testing)?
- What evidence is there that people are able to achieve their retirement income outcomes without seeking formal financial advice?
- Is there sufficient integration between the Age Pension and the super system?

Submissions are due by 3 February 2020. The panel's final report is due by June 2020.

ATO grants two months deferral for bushfire victims

The ATO [has announced](#) that it will grant a two-month lodgment and payment deferral to taxpayers affected by the recent bushfires in NSW and Queensland. Acting Deputy Commissioner Andrew Watson said "we have applied automatic lodgment and payment deferrals to postcodes impacted by the fires, meaning if you've been impacted by the fires you don't need to contact the ATO or your tax professional - we've already done it for you." Among other deferrals, individuals in impacted areas who have lodged their 2018-19 income tax returns and have

received a bill that would normally be due on 21 November 2019 now have until 21 January 2020 to pay, the ATO stated.

Proposed draft rulings: employee transport; trust splitting

The ATO has updated its [matters for consultation](#), including the following proposed draft tax rulings:

- [Employee transport expenses](#) - draft taxation ruling on employee transport expenses will "soon be released" for public consultation. The draft will partially replace draft Taxation Ruling TR 2017/D6.
- [Trust splitting - reimbursement agreements](#) - ATO is seeking further feedback from members of the General Anti-Avoidance Rules Panel on its proposed draft taxation ruling regarding reimbursement agreements which aim to prevent trust stripping. The draft taxation ruling sets out the ATO's preliminary views on the exclusions from a "reimbursement agreement" (s 100A of the ITAA 1936) for agreements not entered into with a purpose of eliminating or reducing someone's income tax, and agreements entered into in the course of ordinary family or commercial dealings. Consultation is expected to be completed by December 2019.

ATO urges small employers to make the switch to STP

The ATO is [urging small employers](#) who've not yet made the switch to Single Touch Payroll (STP) to get in touch if they need help to transition. Small employers with 19 employees or fewer are now required to start reporting through STP, those that haven't can either apply for a deferral or consider if they are eligible for a quarterly reporting concession. The Assistant Commissioner said the ATO wants the transition to STP "to be simple and manageable for all employers, and no penalties will be applied in the 2019-20 financial year for small employers who make a genuine attempt to transition or for missed or late reports." The ATO has also launched a video series about small employers and their transition so that others can hear about how they made the move to STP.

Tax fraud: don't share myGov passwords

The Tax Practitioners board (TPB) [has advised](#) that a recent case highlights the risk of identity crime and the importance of not sharing private myGov password information. The Board said a man posed as a tax agent and lodged over 1,000 individual tax returns using each taxpayer's personal myGov access. He charged

clients for his services and also took some refunds his clients were due by using his own bank details to take the payments. The TPB said the man pleaded guilty to charges including dishonestly obtaining financial advantage by deception and dealing with identity information to commit an indictable offence. The man is due for sentencing on 4 December 2019 at Mount Druitt Court in Sydney.

Centrelink robo-debt changes for income reviews

The Department of Human Services (DHS) has [announced](#) that it will make changes to how it uses details from the ATO in online income compliance reviews. This follows concerns about the way some Centrelink recipients have had their benefits clawed back via its "Robodebt scheme". DHS said it uses data from the ATO (and other third parties) to check an individual's employment income is correct to make sure they get the right Centrelink payment. Since July 2016, more than 400,000 Debt Notices have been issued to recover alleged "debts" based on a comparison between ATO data and income reported by individuals receiving benefits.

If an individual did not contact DHS to update their exact dates of work and income earned, DHS says it may have used the ATO information (rather than investigating a person's "actual" fortnightly earnings). DHS said it will write to benefit recipients where it used only income "averaging" (based on ATO data) in their online income compliance review. If a review outcome was a debt, DHS said it will freeze any repayment arrangements while it reassess the individual's case. DHS will also contact individual's if the income details it gets from the ATO are different to the details supplied by the individual.

ATO disclosure of protected information: deceased estates

The ATO has released an *Exposure Draft - Taxation Administration (Remedial Power – Disclosure of Protected Information by Taxation Officers) Determination 2019* ([CRP 2019/D1](#)). It seeks to modify the operation of s 355-25(2) of Sch 1 to the TAA, which sets out the entities to which ATO officers can disclose otherwise protected information.

When implemented, the determination will allow officers to disclose information to registered tax agents or BAS agents of an executor or administrator of the estate of a deceased individual. The exemption will also apply to legal practitioners who represent an executor or administrator in relation to the deceased's affairs relating to one or more taxation laws.

Comments are due 20 December 2019.

High Court refuses to quash lower court decisions

A single judge of the High Court has refused to make an order quashing a Full Federal Court judgment upholding amended assessments for the 2006 to 2013 income years: [Bosanac v FCT \[2019\] HCA 41](#) (High Court, Nettle J, 22 November 2019).

The taxpayer did not lodge returns for the 2006 to 2013 income years until after the ATO commenced an audit of his tax affairs. Amended assessments were eventually issued and then, after considering the taxpayer's objections to those amended assessments, the ATO issued further amended assessments (the taxpayer's taxable income was increased by just over \$9.7m in total). Shortfall penalties were also imposed. At first instance, the taxpayer failed to prove the further amended assessments were excessive, largely because he failed to keep adequate records (*Bosanac v FCT* [2018] FCA 946). That decision was upheld on appeal (*Bosanac v FCT* [2019] FCAFC 116). The taxpayer then applied to the High Court for writs of certiorari to quash both the first instance and Full Court decisions, submitting that both the primary judge and the Full Court misconceived the nature of his appeal, as an appeal in respect of the amended assessments rather than as an appeal in respect of the further amended assessments.

Nettle J refused to grant the writs. His Honour agreed with the Full Court that the issue of the further amended assessments did not alter the subject matter of the taxpayer's appeal against the objection decisions. The determination of an objection was a separate exercise of power by the ATO to any amendment to the assessment made consequent upon an objection, and amending an assessment did not trigger a fresh right to object to the whole of the assessment. Nettle J also rejected a submission that the further amended assessment for the 2009 income year should be reduced by \$600,000 as the ATO conceded that two deposits totalling that amount were not assessable income. His Honour agreed with the primary judge and the Full Court that the taxpayer was still required to show that the further amended assessment was wrong and he had failed to do that.

ATO appeals Addy backpacker decision

The [Commissioner has appealed to the Full Federal Court](#) against the decision of Logan J in *Addy v FCT* [2019] FCA 1768. The Federal Court held there that by virtue of a "non-discrimination clause" in Art 25 of the Australia-UK DTA, a British working holiday maker, who qualified as an Australian tax resident could pay tax at the rates that apply generally to Australian residents. This included getting the benefit of the tax-free threshold, rather than the minimum 15% tax rate which otherwise applies to working holiday makers. The ATO states that it will continue to administer the working holiday maker income tax rates in line with current practice until the appeals process is exhausted. It considers that employer obligations have not changed and so employers should apply the PAYG withholding tax rate in accordance with their employees' TFN declarations. Working holiday makers who may potentially be entitled to a refund are encouraged to wait until the appeal has been decided before seeking a refund, amending their return or objecting.

Jail terms for GST property fraud

The ATO [has advised](#) that a building developer from North-East Melbourne has been sentenced in the County Court of Victoria to three years in jail for GST fraud. The ATO said it discovered that the developer was involved in claiming more than \$500,000 in fraudulent GST refunds he made in BASs lodged for two separate companies. As the director of one building company, the developer lodged seven BASs between 2010 and 2012 where he dishonestly obtained a financial advantage of close to \$420,000. As the director of another company, the ATO said he also lodged two BASs in 2012 in which he fraudulently claimed more than \$118,000 in GST refunds. The Court found that these claims totalling \$537,616 were entirely fraudulent. A reparation order was made by the Court for the full amount.

The ATO has also [reported](#) that a woman has been sentenced to two years and 10 months in jail for GST fraud of \$1.7 million. The ATO said the woman purchased, developed and sold 10 luxury properties between 2005 and 2011. She carried out extensive work on the properties, developing and subdividing them before selling them for a profit. The ATO said the woman sold these properties for more than \$20 million and made a total profit of more than \$4.4 million. She claimed the properties were for personal use, but she was carrying on a business and should have been registered for GST, lodging BASs and reporting the property sales, the ATO said. By choosing not to, she evaded paying \$1.7 million in GST.

FINANCIAL SERVICES

AFS licensees get three-year exemption from ASIC compliance

[ASIC Corporations \(Amendment\) Instrument 2019/1145](#) has suspended until 31 October 2022 the obligation for AFS licensees to ensure their financial advisers are covered by an ASIC-approved compliance scheme. The Instrument grants AFS licensees a three-year exemption so that they will not need to comply with the compliance scheme and notice obligations until 31 October 2022 (instead of 1 January 2020).

This means that AFS licensees will not be in breach of the compliance scheme obligations and related notice obligations under s 921H of the *Corporations Act 2001* because they are now unable to comply with these obligations. ASIC's action follows the Government's previous announcement that it will establish a single disciplinary body for financial advisers by early 2021. As a result, applications for ASIC approval of a compliance scheme have been withdrawn. The new disciplinary body will displace the role of compliance schemes in monitoring and enforcing the Financial Planners and Advisers Code of Ethics.

AFS licensees must ensure advisers comply with FASEA code

ASIC has [confirmed](#) that it will not be monitoring or enforcing compliance by individual advisers with the [Financial Planners and Advisers Code of Ethics 2019](#). This is partly because ASIC does not have the power under the *Corporations Act 2001* to ban an adviser for breaches of the code. However, ASIC still expects AFS licensees to take "reasonable steps" to ensure that their advisers comply with the code from 1 January 2020. Reasonable steps include making sure that their advisers are aware that they need to comply with the code from 1 January 2020, and providing training on the types of conduct that is consistent/inconsistent with the code.

ASIC said it will take a facilitative approach to compliance with the code until the new single disciplinary body is operational. In the meantime, ASIC warns that it may take enforcement action where it receives reports of breaches of the law by financial advisers or their AFS licensees. It has previously registered an [Instrument](#) to grant a three-year exemption so that AFS licensees do not need to ensure that their advisers register with an ASIC-approved compliance scheme until 31 October 2022 (instead of 1 January 2020). This follows the Government's announcement that it will

establish a single disciplinary body for financial advisers (which will displace the role of compliance schemes in monitoring the code).

ASIC bans adviser for SMSF property advice

ASIC has [banned](#) a Victorian financial adviser for six years for advice provided in relation to property investments by self-managed superannuation funds (SMSFs). The adviser had been approached by clients seeking advice about establishing SMSFs for the purposes of investing in property. The adviser had a conflict of interest because his clients were looking to invest through his brothers who were property developers. The adviser referred his clients to an SMSF administration business to facilitate the establishment of their SMSFs without providing advice. However, he then provided advice to rollover their existing super funds into their new SMSFs.

In respect of advice provided to four clients, ASIC alleged that the adviser failed to prioritise his clients' interests and failed to act in their best interests. Among other things, ASIC alleged that the adviser did not scope the advice to be consistent with his clients' circumstances, and did not address how an SMSF property investment strategy would meet his clients' retirement objectives. Rather, ASIC said the adviser had focused the advice on rolling over to SMSFs without adequately considering alternative options, such as whether his clients would be better off retaining their existing super funds.

Westpac facing civil penalty for millions of AML/CTF breaches

AUSTRAC has commenced civil penalty proceedings against Westpac Banking Corporation (WBC) for over 23 million alleged contraventions of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act): Chief Executive Officer of the Australian Transaction Reports and Analysis Centre v Westpac Banking Corporation (Federal Court, File No: NSD1914/2019).

AUSTRAC has alleged that Westpac's oversight of its banking and designated services provided through its "correspondent banks" was "deficient", along with its AML/CTF Program which should identify, mitigate and manage the risks of its designated services. AUSTRAC CEO, Nicole Rose, said these oversight failures resulted in "serious and systemic non-compliance" with the AML/CTF Act. AUSTRAC's [concise statement](#) sets out the details of the alleged contraventions,

including that Westpac failed to report over 19.5 million International Funds Transfer Instructions (IFTIs) to AUSTRAC over five-years. The late incoming IFTIs received from four correspondent banks alone represent over 72% of all incoming IFTIs received by Westpac in the period 2013 to 2018 and amounts to over \$11 billion.

For its part, Westpac [said](#) it is committed to assisting AUSTRAC and has been heavily investing in a program of work to improve its management of financial crime risks. In relation to the IFTIs, Westpac said it has reported all the relevant transactions to AUSTRAC and closed its Australasian Cash Management (ACM) product (which allowed for cheaper "batch" transfers from overseas to Australia). According to Westpac, the majority of the payments for which the reports were not generated were recurring, low-value payments made by foreign government pension funds to people living in Australia.

SUPERANNUATION

ATO to contact SMSFs without unique bank account

The ATO has [advised](#) that, in early 2020, it will contact self-managed super fund (SMSF) trustees that do not have a unique bank account for super payments. The ATO said it will ask them to update their fund's bank account information. SMSF trustees are required to maintain a unique SMSF bank account to manage the fund's operations and accept contributions, rollovers and income from investments. For example, all regulated funds (including SMSFs) must be able to receive electronic messages and payments associated with employer contributions (except in the case of a related party employer contribution). A fund's bank account must also be kept separate from the trustees' individual bank accounts, and any related employers' or advisers' bank accounts. The ATO notes that tax agents can assist SMSF clients to update their financial institution details via [Online services for agents](#).

Sole purpose test: update compliance approach

The ATO has updated its Website guidance (ref: [QC 60675](#)) to confirm its compliance approach to the sole purpose test for self-managed superannuation funds (SMSFs) investing in the DomaCom Fund - the managed investment scheme at the centre of *Aussiegolfa Pty Ltd (Trustee) v FCT* (2018) 108 ATR 527. The ATO

guidance reflects the detail outlined in its letter to DomaCom Limited (dated 30 October 2019). In *Aussiegolfa*, the Full Federal Court held that an SMSF investment in the DomaCom Fund to acquire a fractional interest in a property (to be leased at market rent to the member's daughter) did not breach the sole purpose test in s 62 of the SIS Act. However, the Full Court still ruled against the trustee by finding that the investment was an in-house asset and in breach of the 5% limit.

The ATO has confirmed on its Website (ref: [QC 60675](#)) that it will not undertake compliance activities where an SMSF trustee has breached the sole purpose test in s 62 of the SIS Act through their investment in the DomaCom Fund, if the SMSF trustee has signed the "Sole Purpose Test Declaration" and retains a copy of this declaration; provides a copy to their approved auditor; and the ATO is not subsequently made aware of evidence that indicates the trustee has acted inconsistently with the terms of the declaration. Importantly, the ATO warns that it may still apply compliance resources to scrutinise whether an SMSF investment in the DomaCom Fund contravenes other provisions of SIS Act. The ATO will also consider compliance with the sole purpose test in relation to other transactions or behaviour.

The ATO said it welcomes others offering similar fractional investment products (who are considering the sole purpose test implications of their product) to engage with the ATO to explore a similar approach by requesting SMSF specific advice from the ATO. A trustee of an SMSF (or their advisor) can request SMSF specific advice (ATO form [NAT 72441](#)) on how the SIS Act or Regs apply to a specific arrangement. Note that, unlike a private tax ruling, such SMSF advice from the ATO is non-binding.

ATO looking to reunite \$20.8bn in lost super

At a recent conference, ATO Deputy Commissioner, Superannuation and Employer Obligations James O'Halloran [outlined](#) what the ATO is doing to inform taxpayers about lost and unclaimed super and the need to consolidate multiple accounts. "We'll launch our annual postcode 'lost super' campaign in the week beginning 18 November. Between 1 July 2013 and 30 June 2018, the number of individuals with two or more super accounts (not including SMSFs) decreased by 16%. Currently, 5.8 million individuals (representing 36% of all individuals) have two or more super accounts. Pleasingly Mr O'Halloran said, over the past five financial years (1 July 2014 to 30 June 2019), some 2.6 million accounts to the value of \$15 billion have been consolidated by fund members using ATO online services. This includes some 540,000 accounts to the value \$4.4 billion that were consolidated between 1 July 2018 and 30 June 2019.

To give people visibility of the issue, the ATO has created tables of lost and unclaimed super per state and postcode. Taxpayers are able to find their state and postcode in these tables and log into myGov to make sure none of it is theirs. An added dimension of the ATO's role is in the inactive low-balance account (ILBA) reporting aspects of the Protecting Your Super measure and the proactive reuniting by the ATO of super accounts and balances, said Mr O'Halloran. He said the ATO has reunited just over 841,000 accounts worth nearly \$1.38 billion. This includes approximately 684,000 accounts worth \$1.22 billion that have been transferred into an individual's active super account and approximately 157,000 accounts worth \$161 million directly to individuals' bank accounts.

Insurance within super for low-balance accounts

APRA has released [guidance](#) on the implementation of the Treasury Laws Amendment (Putting Members' Interests First) Act 2019 that will require RSE licensees to cease providing insurance within super on an opt-out basis for:

- account balances less than \$6,000 (active low-balance accounts); and
- new members under age 25 (who begin to hold a new product).

By 1 December 2019, trustees must give notice to impacted members that their insurance cover will cease on 1 April 2020, unless they elect in writing to maintain the insurance. ASIC has also reminded trustees that they should provide members with balanced and factual communications tailored to their needs: see [ASIC's guidance](#).

Proposed revisions to APRA standard: insurance

APRA has released its [proposed revisions](#) to Prudential Standard SPS 250 (Insurance in Superannuation) aimed at helping trustees select the most appropriate insurance policies for members. The proposed revisions are in response to [APRA's post-implementation review](#), and also respond to two of the recommendations from the Banking Royal Commission. In a [letter](#) to trustees, APRA said the proposed revisions to SPS 250 will require a process that enables beneficiaries to easily opt-out of insurance cover. APRA also said the level and type of insurance cover must not inappropriately erode the retirement income of beneficiaries.

As recommended by the Banking Royal Commission, SPS 250 will demand that any status attributed to a beneficiary in connection with the provision of insurance is "fair and reasonable". Likewise, independent certification will be required that insurance arrangements are in the best interests of beneficiaries. The revised standard is proposed to come into effect on 1 January 2021. Transitional arrangements will also commence on the date of registration of the final revised SPS 250 (anticipated to be in July 2020). APRA is expected to finalise the prudential standard by mid-2020. Insights from the consultation will also form the basis of a revised Prudential Practice Guide (SPG 250) which APRA will consult on in early 2020.

Submissions are due by 3 February 2020.

Choice of super fund and enterprise agreements Bill

The [Treasury Laws Amendment \(Your Superannuation, Your Choice\) Bill 2019](#) has been introduced in the House of Reps. It proposes to extend the super choice of fund regime to employees covered by enterprise agreements and workplace determinations made from 1 July 2020. Currently, employers who make contributions in accordance with an enterprise agreement or workplace determination are deemed to comply with the choice rules in the Superannuation Guarantee (Administration) Act 1992 (SGAA).

An employer will not be required to provide existing employees with a choice form, unless requested once a new determination or agreement is made on or after 1 July 2020. However, existing employees will be able to request a choice of fund form and the employer will be required to act on this request. A technical amendment will also ensure employers are not penalised with a SG shortfall if they rely on the existing exemptions for employees in certain defined benefit schemes.

Date of effect: The proposed amendments will only apply to new enterprise agreements and workplace determinations that are made on or after 1 July 2020.

REGULATOR NEWS

New ASIC powers Bill introduced

The [Financial Sector Reform \(Hayne Royal Commission Response - Stronger Regulators \(2019 Measures\)\) Bill 2019](#), has been introduced in the House of Reps, it proposes to grant ASIC new enforcement and supervision powers in response to the recommendations of the ASIC Enforcement Review Taskforce and Banking Royal Commission. The Bill proposes to:

- ongoing "fit and proper person" test - strengthen ASIC's licensing powers by replacing the AFS licence requirement that a person be of "good fame and character" with an ongoing requirement that they be a "fit and proper person" at both the time of application and subsequently;
- banning orders - extend ASIC's powers so that they may ban a person from performing functions in a financial services or credit business. The legislation will also expand the grounds on which ASIC can issue banning orders;
- search warrants - harmonise ASIC's search warrant powers across ASIC-administered Acts and bring them into line with the search warrant powers in the Crimes Act 1914 (Cth);
- phone taps - allow interception agencies (such as the police, ASIO and anti-corruption bodies) to provide lawfully intercepted telecommunications information to ASIC for serious offences that ASIC can investigate or prosecute; and
- penalties - align the penalties for false and misleading statements in AFS and Credit Licence applications.

Date of effect: Generally, the day after the Bill receives Royal Assent. Although the power to share intercepted telecommunications with ASIC will also apply to information held by an interception agency before Royal Assent to the Bill.

APRA's approach to governance and culture

APRA has [released](#) an information paper setting out its plans to lift standards of governance, culture, remuneration and accountability (GCRA) across the industries it regulates. APRA Deputy Chair, John Lonsdale, said last year's self-assessments of risk governance revealed that the financial sector was grappling to manage GCRA risks. Although boards are ultimately responsible for GCRA, Mr Lonsdale said APRA believes a higher degree of regulatory prescription and oversight is needed.

The information paper, [Transforming governance, culture, remuneration and accountability: APRA's approach](#), sets out a more intensive regulatory approach to transform GCRA practices. The key attributes of APRA's new approach to GCRA are: strengthening the prudential framework; sharpening APRA's supervisory focus; and sharing APRA's insights to better inform the industry and public.

Mr Lonsdale said APRA's enhanced GCRA team will undertake a range of GCRA-related thematic reviews and deep-dives, as well as utilise entity self-assessments and industry-wide surveys. APRA intends to publish the results and findings to the fullest extent possible. According to APRA, enhanced transparency will help ensure GCRA is a higher priority for boards and management, Mr Lonsdale said.

Super business performance reviews: APRA guidance finalised

APRA has finalised its [Prudential Practice Guide SPG 516](#) (Business Performance Review) and released its [response](#) to industry submissions.

SPG 516 provides guidance on the new requirement for superannuation licensees to conduct an annual Business Performance Review (BPR) as part of the annual member outcomes assessment under s 52(9)-(11) of the SIS Act and Prudential Standard [SPS 515](#) (Strategic Planning and Member Outcomes). The BPR requires super licensees to assess outcomes at the product level across a broader range of metrics for different member cohorts.

APRA said it will be looking for RSE licensees to implement these new requirements on a "best endeavours basis" during the first year of implementation. However, the depth and sophistication of the analysis in the BPR and outcomes assessment is expected to improve over time as better practices emerge. APRA said RSE licensees can begin this improvement process by undertaking a trial outcomes assessment in 2020, covering all or a subset of its MySuper and choice products.

Date of effect: APRA expects all RSE licensees to have updated their strategic objectives, business plans and expenditure management processes, to be compliant with SPS 515 from 1 January 2020.

APES 205 Conformity with Accounting Standards and APES 315 Compilation of Financial Information to align with the restructured Code

The APESB website has been updated with the following content:

APES 205 Conformity with Accounting Standards (effective from 1 January 2020)

- [Technical Update](#)
- [Standard](#)

APES 315 Compilation of Financial Information (effective from 1 January 2020)

- [Technical Update](#)
- [Standard](#)

The revised standards are available to download as Interactive PDFs which include dynamic links to sections and sub-sections, pop-up definitions upon mouse rollover for defined terms and links to external websites.

APESB issues guidance on prohibitions related to Public Interest Entities and audit partner rotation requirements in Australia

The APESB Technical Alert mentions that ‘Two key aspects of independence relate to the requirements that prohibit the provision of specific services and activities to audit clients that are Public Interest Entities (PIEs) and audit partner rotation requirements’. The APESB have developed a new resource that ‘sets out a high-level summary on prohibitions in the restructured code, *APES 110 Code of Ethics for Professional Accountants (including Independence Standards)*, section 540 and section 940 *Prohibited Non-assurance Services, Interests and Relationships for Auditors of Public Interest Entities (PIEs)*’. APESB has also revised its publication ‘*Audit Partner rotation requirements in Australia – Technical Staff Questions & Answers*’ to align with the restructured code. ‘These publications do not amend or overwrite the Code, the text of which alone is authoritative. Reading these publications is not a substitute for reading the Code’.

The two resources are available for download on the APESB website at <https://apesb.org.au/>.