

VICTORIAN GOVERNMENT ASSISTANCE RECENT LOCKDOWN

Circuit Breaker Action Business Support Package

The Victorian Government has announced a \$143 million package to support eligible businesses impacted by the circuit breaker action to limit the spread of COVID-19.

TAXATION

ATO data-matching changes: super early access; JobMaker etc

ATO has notified of amendments to its data-matching programs in relation to JobKeeper, super early access, temporarily cash flow boost and the JobMaker hiring credit.

STP data matching protocol updated

A notice has been gazetted that provided updated information of program protocol for data matching between the ATO and Services Australia.

Closely held payees: STP options for small employers

ATO has released details of the three options that small employers with closely held payees will have for STP reporting.

CPE hours proposed to increase

TPB has released two continuing professional education exposure drafts which outline the proposed increase to the minimum number of CPE hours.

Application of promoter penalty laws: DIS

ATO has issued a decision impact statement on the Federal Court's decision in which an accountant and related companies were found to be promoters.

Governance standards for charities

Treasury has released exposure draft regulations which extend the scope of a governance standard to cover off ambiguity.

Deductibility of employee transport expenses

ATO has released Taxation Ruling TR 2021/1 on the deductibility of employee transport expenses.

Accommodation, food and drink expenses and allowances

ATO has issued Draft Taxation Ruling TR 2021/D1 and an accompanying Draft Practical Compliance Guideline PCG 2021/D1 on income and FBT consequences.

Payment of tax liabilities not result in serious hardship

AAT has affirmed an ATO decision not to release a taxpayer from his tax liabilities on the grounds of serious hardship.

FINANCIAL SERVICES

Financial Reforms No 2 Bill passes House of Reps

Bill to implement recommendations of the Banking Royal Commission re ongoing fee arrangements, lack of independence and advice fees in super has passed House of Reps.

Statutory demand threshold: Treasury consultation

Treasury has released a consultation paper seeking feedback on whether to change the statutory demand threshold.

ASIC cost recovery for corporate insolvency

Regulations have been registered which will allow ASIC to recover costs from its regulation activities undertaken by small business restructuring practitioners.

SUPERANNUATION**Application of super income stream: DIS**

ATO has issued a decision impact statement on a decision of the Full Federal Court relating to taxation of invalidity benefits paid to former ADF members.

Your Future, Your Super: Bill

Bill to implement measures including single default accounts, best financial interests duty, and to address underperformance in super has been introduced into Parliament.

REGULATOR NEWS**ANAO audit of JobKeeper administration**

Australian National Audit Office has commenced an audit to assess the effectiveness of the ATO's administration of the JobKeeper scheme.

APRA 2020 "Year in Review"

APRA has released its annual Year in Review document for 2020 including its views on the financial environment and details of its key activities.



FASEA exam deadline nears

Members are reminded that 'the exam is a required component of the education standard' and existing Advisers will be required to pass the exam by 31 December 2021. There are only 6 sittings (15 to 20) being offered prior to the deadline.

VICTORIAN GOVERNMENT ASSISTANCE RECENT LOCKDOWN

Circuit Breaker Action Business Support Package

Victoria's business community has been greatly impacted by the global pandemic.

To help businesses recover, the [Victorian Government has announced a \\$143 million package](#) to support eligible businesses impacted by the circuit breaker action to limit the spread of COVID-19.

This is a package of cash grants and direct payments to small businesses who were most impacted by the circuit breaker action, including businesses in hospitality, tourism, events, and selected retail.

The package is expected to help more than 50,000 Victorian businesses. These businesses include restaurants, florists, accommodation providers, musicians and performers, who incurred costs, such as the loss of perishable goods, flowers, cancellation fees and charges, because of the necessary public health actions.

It includes four initiatives to support small businesses, including sole traders.

The new \$92 million [Business Costs Assistance Program](#) offers grants of \$2000 for eligible businesses and sole traders in the most impacted sectors of hospitality, food wholesaling, tourism, events, and selected retail. Applications are open and will close on Tuesday 16 March 2021.

A \$24.9 million injection to the [Licensed Hospitality Venue Fund](#) will give previous eligible recipients of this grant a \$3000 one-off, per premises payment.

The \$16.2 million Victorian Accommodation Support Program will assist accommodation providers that had bookings cancelled between Friday 12 February and Wednesday 17 February, due to the circuit breaker action.

The Victorian Accommodation Support Program will open soon. [Registrations of interest are now open.](#)

A further \$10 million investment will expand and build on the success of the Regional Travel Voucher Scheme. There will be a new Melbourne Travel Voucher Scheme offering 40,000 vouchers for greater Melbourne, and an additional 10,000 vouchers to support travel in regional Victoria. This brings the total number of vouchers offered in Victoria to 200,000.

Further details on how to access the programs are available on the Business Victoria website.

TAXATION

ATO data-matching changes: super early access; JobMaker etc

The [Notice of amendment to a data-matching program](#) has been gazetted for the purpose of verifying eligibility criteria for: (i) JobKeeper payments; (ii) temporary early access to superannuation; (iii) temporary cash flow boost; and (iv) JobMaker Hiring Credit.

The notice states that the ATO will acquire:

- confirmation of government payment made to applicants of temporary early access to superannuation for the period of 19 April 2020 to 31 December 2020 from Services Australia;
- confirmation from Services Australia of income support payments made to additional employees nominated by applicants for Jobmaker Hiring Credit for the period of 7 October 2020 to 6 October 2021. Income support payments must have been received for at least 28 consecutive days within the 84 days prior to commencing employment within 7 October 2020 to 6 October 2021; and
- details of incarcerated individuals for the period of 1 March 2020 to 6 October 2021 from State and Territory correctional facility regulators.

The ATO expects the data matching program to:

- ensure COVID-19 economic response provides timely support to affected workers business and the broader community;
- undertake verification of applications and identify compliance issues;

- implement treatment strategies to improve voluntary compliance, which may include educational and compliance activities as appropriate;
- identify and educate those individuals and businesses who may be failing to meet their registration and/or lodgment obligations and assist them to comply; and
- help ensure that individuals and businesses are fulfilling their tax and superannuation reporting obligations.

STP data matching protocol updated

The [Notice of the STP Data Matching Programme](#) has been gazetted. It provides an updated version of the program protocol for data matching between the ATO and Services Australia. The data matching program involves the exchange of Single Touch Payroll (STP) data from the ATO for individuals who have interaction with Services Australia. The program will assist Services Australia modernise its delivery system by:

- enabling pre-filling of employer details, including income amounts, as reported through STP, into the Agency online services for review by customers;
- supporting employers to fulfil their Child Support reporting obligations by voluntarily reporting through STP, rather than having to go through a separate remittance process;
- supporting the timely confirmation of employment and where appropriate, the establishment of child support employer withholdings;
- identifying significant differences between STP income and the income estimate the customer has provided to the Services Australia. This will facilitate customer messaging to suggest they review their income estimates;
- identifying Family tax benefit customers, based on STP data;
- requiring customers to lodge a tax return and complete an ATO "Non-lodgement advice". Services Australia may provide advice on where customers can seek more information on how to lodge;
- supporting existing debt recovery processes; and
- enabling analysis of the data with a view to improve the Services Australia's processes.

Closely held payees: STP options for small employers

The ATO has released [details](#) of the three options that small employers with closely held payees will have for STP reporting purposes from 1 July 2021. Small employers (ie those with 19 or fewer employees) with closely held payees have been exempt from reporting these payees through STP for the 2019-20 and 2020-21 financial years. However, they must commence from 1 July 2021.

A closely held payee is an individual who is directly related to the entity from which they receive a payment, eg family members of a family business; directors or shareholders of a company; and beneficiaries of a trust.

There are three options provided by the ATO from 1 July 2021, namely to report:

- actual payments on or before the date of payment – ie whenever a small employer makes a payment to a closely held payee, report the information on or before each pay event;
- actual payments quarterly – report actual payments to closely held payees quarterly. In other words, each quarter, when the activity statement is due, report all payments made in that quarter; or
- a reasonable estimate quarterly – report amounts equal to or greater than a percentage of gross payments and tax withheld from the latest year, across each quarter. There are various safe harbour provisos relating to failure to withhold penalties.

CPE hours proposed to increase

The TPB has released two continuing professional education (CPE) exposure drafts:

- [Exposure Draft TPB\(EP\) D44/2021 Continuing professional education policy requirements for registered tax \(financial\) advisers](#); and
- [Exposure Draft TPB\(EP\) D43/2021 Continuing professional education policy requirements for registered tax and BAS agents](#).

The key proposed changes are the increase in the minimum number of CPE hours to 120 hours over three years for all registered tax practitioners and the flexibility for practitioners to elect either a calendar or financial year basis for their three-year CPE period. An amount of educative health and wellbeing activities is also proposed to count towards CPE.

Date of effect: 1 July 2021. Pro-rata basis for those with renewal periods before or after 1 July 2021.

Submissions are due by 11 March 2021.

Application of promoter penalty laws: DIS

The ATO has issued a [decision impact statement](#) on the Federal Court's decision in *FCT v Bogattio* [2020] FCA 1139. In that case, Court held that an accountant and three companies he controlled were promoters of various tax exploitation schemes relating to the R&D tax incentive.

The ATO said the decision confirms that the promoter penalty laws can apply to promoters of bespoke arrangements for individual clients. That said, the Court's rejection of the Commissioner's argument that, on the operation of s 290-55(6) of Sch 1 to the TAA, there can be an unlimited period for the Commissioner to commence proceedings for an unimplemented scheme might mean the ATO will "re-test" the point in an appropriate future case.

The ATO also said that the Court's view about the relevance of record-keeping to the standard of evidence for the Commissioner to discharge the onus of proof (in the case) does not change the onus of proof that is on a taxpayer to establish that an assessment is excessive in a review or appeal against an objection decision under Pt IVC of the TAA.

The ATO said that it is updating: (i) Practice Statements Law Administration PS LA 2008/7 Application of the promoter penalty laws (Division 290 of Schedule 1 to the Taxation Administration Act 1953) to promotion of tax exploitation schemes; and (ii) PS LA 2008/8 Application of the promoter penalty laws (Division 290 of Schedule 1 to the Taxation Administration Act 1953) to schemes involving product rulings and will consider incorporating the decisions in the replacement guidance.

Comments are due by 5 March 2021.

Governance standards for charities

Treasury has released exposure draft [Australian Charities and Not-for-profits Commission Amendment \(2021 Measures No. 2\) Regulations 2021](#). These will extend the scope of governance standard three of the Australian Charities and Not-for-profits Commission Regulation 2013 to cover off ambiguity in the standard. This follows a Government review in 2018, which recommended that test case funding should be made available to develop the law in matters of public interest, including disqualifying purposes. The Government instead decided to explore a legislative fix.

The changes include adding paragraphs to the standard to make clear that an entity is not entitled to be registered or remain registered under the ACNC Act 2012 if:

- the entity does an act (or omits to do an act) that may be dealt with as a summary offence under an Australian law relating to real property, personal property or causing personal injury or harm to an individual; or
- the entity fails to take reasonable steps to ensure its resources are not used to promote acts (or omissions) by any entity that may be dealt with as an indictable offence, a relevant summary offence, or a civil penalty of 60 penalty units or more.

Proposed date of effect: Day after the instrument is approved by the Parliament.

Submissions are due by 14 March 2021.

Deductibility of employee transport expenses

The ATO has released [Taxation Ruling TR 2021/1](#) on the deductibility of employee transport expenses. This Ruling sets out general principles for determining if a transport expense satisfies the requirements of s 8-1 ITAA 1997, ie whether it is incurred in gaining or producing assessable income and whether it is non-private, non-domestic expenditure.

As a general rule, transport expenses incurred by an employee in travelling between home and a regular place of work are not deductible, while those incurred in travelling between work locations are. Expenditure incurred in transporting bulky equipment between home and work may be deductible if the equipment is essential for performing employment duties and its transportation is a practical necessity (eg there is no secure area to store the equipment at work).

TR 2021/1 includes 12 examples on the deductibility of employee transport expenses in a range of common circumstances.

Date of effect: retrospective.

TR 2021/1 finalises Draft TR 2019/D7 and takes the same general approach as the draft. An earlier Draft Ruling -TR 2017/D6 - which also considered the deductibility of accommodation, meal and incidental expenses, was [withdrawn](#) today. The income tax and FBT issues concerning travel away from home are now dealt with in Draft TR 2021/D1. To the extent that there is any conflict between TR 2021/1 and Draft Rulings TR 2017/D6 and TR 2019/D7, the ATO will have regard to the earlier drafts in deciding whether to apply compliance resources in income years to which the earlier draft applies.

Accommodation, food and drink expenses and allowances

The ATO has issued [Draft Taxation Ruling TR 2021/D1](#) and an accompanying [Draft Practical Compliance Guideline PCG 2021/D1](#).

Draft TR 2021/D1 explains:

- the deductibility of accommodation and travel-related food and drink expenditure, ie whether it is incurred in gaining or producing assessable income and whether it is not of a private, domestic or capital nature;
- the FBT consequences where an employee is reimbursed, or the employer provides or pays for the expenditure; and
- the difference between a travel allowance (as defined in s 900-30(3) ITAA 1997) and a living-away-from-home-allowance benefit (under s 30 FBTAA).

Draft TR 2021/D1 notes that accommodation and food/drink expenses are ordinarily private or domestic in nature but may be deductible if the employee travels and stays away from home overnight in the course of performing income-producing activities. To be deductible, the expenditure must have a sufficiently close connection to the performance of the employment duties and activities through which income is earned. For example, if the employee is required, as an incident of their employment, to stay away from their usual residence overnight for *relatively short periods of time*, the employee will be travelling on work and the occasion of the outgoing on accommodation and food/drink will generally be found in the employee's income-producing activities. If, however, the employee is living at a location away from their

usual residence, these expenses represent non-deductible living expenses, even if the employee is living at that location due to their employment.

Draft PCG 2021/D1 outlines a proposed compliance approach to enable eligible employers to easily work out whether an allowance or benefit provided to an employee relates to travelling on work or living at a location away from home. The ATO will generally not apply compliance resources to determine if an allowance or benefit relates to expenses for living at a location away from home if the employee is in the same work location for *less than 90 days* in an FBT year (and *no more than 21 consecutive days*).

Proposed date of effect: retrospective.

Comments are due by 19 March 2021.

Payment of tax liabilities not result in serious hardship

The AAT has affirmed an ATO decision not to release a taxpayer from his tax liabilities on grounds of serious hardship: [ZCSB and FCT \[2021\] AATA 138](#) (AAT, Kirk SM, 5 February 2021).

The taxpayer was a paediatric surgery registrar and surgical assistant who managed his tax affairs poorly. He failed to lodge on time his tax returns for most years from 2007 to 2017 and ended up with a tax debt, including PAYG instalments, GST and GIC, of just over \$1.19m.

Although the taxpayer's tax liabilities significantly exceeded his assets, after-tax household income for the 2020 income year was just over \$315,000 (most of which was his income). Annual household expenses were approximately \$270,000, including \$91,000 for renting a large house, \$110,724 in private school fees (the taxpayer and his partner had three children) and financial support for the taxpayer's mother and brother in the UK (at least \$1,000 per month).

The AAT affirmed the ATO's decision not to release the taxpayer from his tax liabilities on grounds of serious hardship under s 340-5 of Sch 1 to the TAA, as settlement of those liabilities would not result in serious hardship. The extent of the taxpayer's outgoings on rent, private school fees and financial support for his mother and brother, and the amount of other discretionary expenditure, indicated that the

taxpayer was not experiencing financial hardship. In effect, the AAT said it was open to the taxpayer to reduce his outgoings significantly by renting a cheaper property and moving his children to local government schools (which the AAT said were of a high quality).

FINANCIAL SERVICES

Financial Reforms No 2 Bill passes House of Reps

The [Financial Sector Reform \(Hayne Royal Commission Response No 2\) Bill 2020](#) has been passed unamended by the House of Reps and therefore has made its way to the Senate. It will implement recommendations of the Banking Royal Commission in three key areas.

Ongoing fee arrangements

The Bill will amend the Corporations Act to require financial services providers that receive fees (fee recipients) under an ongoing fee arrangement to:

- provide clients with a single document each year which outlines the fees that will be charged and the services which the client will be entitled to in the following 12 months and which seeks annual renewal from clients for all ongoing fee arrangements; and
- obtain written consent before fees under an ongoing fee arrangement can be deducted from a client's account.

Disclosure of lack of independence

The Bill will further amend the Corporations Act to require a providing entity (a financial services licensee or authorised representative) to give a written disclosure of lack of independence where they are authorised to provide personal advice to a retail client.

Advice fees in superannuation

The Bill will amend the *Superannuation Industry (Supervision) Act 1993* to provide greater protection for superannuation members against paying fees for no service.

The amendments increase the visibility of advice fees for all superannuation products and prohibit the charging of ongoing advice fees from MySuper products.

Statutory demand threshold: Treasury consultation

Treasury has released a [consultation](#) paper seeking feedback on whether to change the statutory demand threshold. This refers to a formal demand for payment of a debt owed by a company issued under the *Corporations Act 2001*.

As part of its response to the COVID-19 pandemic, the Government temporarily raised the threshold to \$20,000 from the former \$2,000. This increase expired on 31 December 2020, with the commencement of a number of other small business insolvency reforms.

The consultation is seeking submissions on whether it should remain at the currently legislated \$2,000, or whether it should be increased to some other amount going forward.

Submissions are due by 5 March 2021.

ASIC cost recovery for corporate insolvency

The Assistant Treasurer has registered the [ASIC Supervisory Cost Recovery Levy Amendment \(Corporate Insolvency Reforms\) Regulations 2021](#). These will allow ASIC to recover costs from its regulation of activities undertaken by a small business restructuring practitioner in the new formal debt restructuring process.

In 2020, in response to the COVID-19 pandemic, the Government enacted a package of reforms to the corporate insolvency framework, including major changes to accommodate eligible small businesses. The Regulations are additional to these reforms to Australia's corporate insolvency framework. In particular, they make amendments to the Cost Recovery Levy Regulations to allow ASIC to recover supervisory costs related to the new formal debt restructuring process.

Entities that are regulated by ASIC are required to pay a levy (the "cost recovery levy") to enable ASIC to recover its regulatory costs. The levy is payable once ASIC issues the leviable entity with a notice setting out its liability for the levy.

SUPERANNUATION

Application of super income stream: DIS

The ATO has issued a [decision impact statement](#) on the Full Federal Court's decision in *FCT v Douglas* [2020] FCAFC 220. In that case, the Court held that in the three test cases concerning the taxation of invalidity benefits paid to former ADF members, arrears of invalidity pay in one case and invalidity pension payments in another case were entitled to concessional tax treatment as a superannuation lump sum, but invalidity pension payments in the third case were not.

The ATO said that it accepts the Court's finding that the Military Superannuation and Benefits (MSB) rules and the Defence Force Retirement and Death Benefits (DFRDB) rules under which the invalidity benefits were paid did not satisfy the requirements of s 1.06(2) of the *Superannuation Industry (Supervision) Regulations 1994*. Accordingly, invalidity benefits paid under pensions provided under the MSB Scheme or the DFRDB Scheme that commenced on or after 20 September 2007 are superannuation lump sum benefits and those paid before 20 September 2007 are superannuation income stream benefits.

Comments are due by 12 March 2021.

Your Future, Your Super: Bill

The [Treasury Laws Amendment \(Your Future, Your Super\) Bill 2021](#) has been introduced into Parliament. There are three Schedules to the Bill.

Single default accounts

Schedule 1 to the Bill amends the SGAA to limit the creation of multiple superannuation accounts for employees who do not choose a superannuation fund when they start a new job.

Date of effect: Sch 1 applies in relation to an employee's employment where that employment starts on or after 1 July 2021.

Addressing underperformance in superannuation

Schedule 2 amends the SIS Act to require APRA to conduct an annual performance test for MySuper products and other products to be specified in regulations (such as "trustee directed products" where the trustee has control over the design and implementation of the investment strategy). A trustee providing such products will be required to give notice to its beneficiaries who hold a product that has failed the performance test. Where a product has failed the performance test in two consecutive years, the trustee is prohibited from accepting new beneficiaries into that product. APRA may lift the prohibition if circumstances specified in the regulations are satisfied.

Date of effect: The amendments made by Sch 2 apply in relation to MySuper products on and after 1 July 2021 and apply in relation to other products specified in the regulations on and after 1 July 2022.

Best financial interests duty

Schedule 3 contains a number of important changes. It amends the SIS Act to:

- require each trustee of a registrable superannuation entity and each trustee of a SMSF to perform the trustee's duties and exercise the trustee's powers in the best financial interests of the beneficiaries;
- require each director of the corporate trustee of a registrable superannuation entity to perform the director's duties and exercise the director's powers in the best financial interests of the beneficiaries;
- allow regulations to be made that prescribe additional requirements on trustees and directors of trustee companies of registrable superannuation entities where failure to comply with these additional requirements would be a contravention of the best financial interests duty;
- allow regulations to be made to specify that certain payments made by trustees of registrable superannuation entities are prohibited, or prohibited unless certain conditions are met (regardless of whether the payment is considered by a trustee to be in the best financial interests of the beneficiaries);
- reverse the evidential burden of proof for the best financial interests duty so that the onus is on the trustee of a registrable superannuation entity. The reverse onus does not apply to additional best financial interest duty requirements prescribed by regulations; and
- allow contraventions of record keeping obligations specified in regulations to be subject to a strict liability offence to provide regulators with an additional

option to respond to compliance issues relating to record-keeping requirements.

Schedule 3 also amends the Corporations Act to remove an exemption from disclosing information about certain investments under the "portfolio holdings disclosure" rules.

Date of effect: from 1 July 2021.

Previous announcement

The Bill will implement some of the measures announced in the 2020-21 Federal Budget.

It also incorporates the Productivity Commission's report Superannuation: Assessing Efficiency and Competitiveness.

REGULATOR NEWS

ANAO audit of JobKeeper administration

The Australian National Audit Office (ANAO) has [commenced an audit](#) to assess the effectiveness of the ATO's administration of the JobKeeper scheme.

The ANAO proposes to examine whether the ATO has:

- effectively administered the rules for the JobKeeper scheme;
- effectively administered measures to protect the integrity of JobKeeper payments; and
- effectively monitored and reported on the operational performance of the scheme.

The report is due to be tabled in October 2021.

APRA 2020 “Year in Review”

APRA has released its annual Year in Review document for 2020, this one entitled "[Safeguarding Australia's financial wellbeing](#)".

The document provides APRA's view on the financial environment and details its key activities for 2020 across the banking, insurance and superannuation industries, conducted in alignment with the strategic objectives outlined in its Corporate Plan. The 2020 Year in Review also contains metrics for APRA-regulated industries, including analysis of industry composition, profitability and financial strength.

The document advises that APRA updated its Corporate Plan for 2020-2024 to account for the substantial impact, now and into the future, of COVID-19. The updated Corporate Plan sets out APRA's strategic objectives over the next 4 years, but pays particular attention to clearly articulating the immediate priorities over the next 12-18 months.

APRA Chair Wayne Byres states that "the environment ahead remains highly uncertain", noting that the full financial impacts of 2020 are still to be felt – and that 2021 could be just as difficult as 2020.

FASEA exam deadline nears

‘The exam is a required component of the education standard that all advisers are required to pass to provide personal financial advice to retail clients in respect of retail financial products. The examination has been designed to reflect the competencies required to provide quality personal financial advice to retail clients by assessing the following knowledge areas:

1. Financial Advice Regulatory and Legal requirements (including Corporations Act chapter 7, AML, Privacy and Tax Agents Services Act (TASA) 2009)
2. Financial Advice Construction – suitability of advice aligned to different consumer groups, incorporating consumer behaviour and decision making
3. Applied ethical and professional reasoning and communication – incorporating FASEA Code of Ethics and Code Monitoring Bodies

FASEA provides suggested reading material and practice questions to help you prepare for the exam.

There is more information on the FASEA website on:

- [Exam policy](#)
- [Preparing for the exam](#)
- [Booking and sitting the exam](#)
- [FAQs](#)
- [Exam Legislative Instrument and Explanatory Statement](#)