

TAXATION

Victorian COVID-19 business support measures

Victoria has announced business support measures including the business costs assistance program, help for licensed hospitality venues, and small businesses.

Victorian rental relief for commercial tenants

Victoria has implemented rental relief for commercial tenants that satisfy certain eligibility criteria.

NSW land tax relief/tenancy support payments

NSW government has advised that applications are open for eligible commercial and residential landlords to claim land tax relief or tenancy support payments.

QLD: further COVID-19-related support measures

Queensland government has released a business support package including one-off grants and payroll-based support.

SA COVID-19 business support measures

SA government has announced details of its support package including cash grants, an additional CBD grant, and support for major events.

ACT: COVID-19 relief package for SMEs

ACT government has announced a business support package of grants to businesses as well as a small business hardship scheme.

TAS: key industries to receive COVID-19 support

Tasmanian government has announced a COVID-19 relief package specifically targeted at businesses operating in tourism, hospitality, arts and events.

TPB update: CPE credit for COVID-19 assistance learning

TPB has announced a relaxation of its continuing professional education requirement to allow practitioners to claim CPE for certain COVID-19 financial assistance courses.

TPB: Beyond Blue's small business owners program counts as CPE

TPB has indicated that Beyond Blue's NewAccess for Small Business Owners program will count towards its professional education.

COVID-19 Bill No 2 receives Royal Assent

Bill to make amendments to the tax treatment of Government's COVID-19 economic response payments for businesses and individuals have received Assent.

TLA (2021 Measures No 1) Bill receives Assent

Bill to extend the application of temporary relief measures relating to virtual AGMs and signing and sending electronic documents has received Royal Assent.

Bill (No 5) 2021 passed by Reps

Bill to implement reforms to the Australian Screen Production Incentive and consequential matters arising from the corporate insolvency reforms has passed Reps.

Bill (No 6) 2021 introduced

Bill to make amendments in relation to super fund actuarial certificates, family law superannuation information and electricity refunds has been introduced in Reps.

Accommodation, food and drink allowances

Ruling and accompanying practical compliance guideline has been issued which explains the deductibility of accommodation and travel related food and drink expenditure.

GST-free cars for disabled: transitional arrangements

ATO has registered a legislative instrument that provides transitional arrangements relating to current disability certificates issued under the 2020 Determination.

FINANCIAL SERVICES**Disciplinary body for financial advisers: policy paper**

Government has released a policy paper on aspects of the proposed disciplinary body for financial advisers that will be set out in Regulations.

Internal dispute resolution: financial services breach reporting

ASIC has registered an instrument that provides ASIC administrative relief to exclude certain breaches of the Internal Dispute Resolution standards from being reportable.

Compensation from financial service providers

ATO has released a fact sheet on the super contribution cap implications of allocating compensation from a financial service provider to a person's super account.

SUPERANNUATION**Your Future, Your Super reforms: regs**

Regulations have been registered to support the government's Your Future, Your Super reforms.

Super COVID-19 re-contribution: ATO update

In an alert to super funds, ATO has confirmed that individuals can now re-contribute super amounts they withdrew under the COVID-19 early release program.

Super fund members' meetings: ASIC areas of improvement

ASIC has highlighted areas of improvement on super funds' annual members' meeting including improving communication.

ATO issues Div 293 super assessments

ATO has reported that it has recently issued a backlog of 30,000 Div 293 assessments for the 2018-19 and 2019-20 financial years after resolving a system issue.

SMSFs: ABR updated to accept more than four members

ATO has advised that ABR has been updated to enable SMSFs to add a fifth or sixth member.

MySuper investment performance testing: APRA approach

APRA has released an information paper on its approach to combining MySuper investment performance histories for purposes of performance testing.

REGULATOR NEWS**TPB corporate plan 2021-22**

TPB has released its corporate plan for 2021-22 highlighting the strategic objectives for the year including efficient registration of tax practitioners.

TPB welcomes new Board member

TPB has welcomed Mr Peter Hogan as a new member to the Board to replace a former member who resigned earlier this year.

NSW COVID-19 business support - Working Group established

Service NSW and NSW Treasury officials have agreed to meet weekly with IPA, CA ANZ, CPA, and The Tax Institute to identify and address issues of concern for accountants helping clients access NSW COVID-19 business support.

TAXATION

Victorian COVID-19 business support measures

The Federal Treasurer and the Victorian Treasurer has issued a [joint press release](#) announcing a new round of support for small and medium businesses. This is a result of the ongoing extension of the Melbourne lockdown, which will remain in place until at least 2 September 2021.

Five key elements make up the support package to help businesses deal with ongoing public health restrictions.

- **COVID-19 Disaster Payments:** eligible workers across the State who lose hours due to the lockdown will be eligible for support through the Commonwealth's COVID-19 Disaster Payment, as will businesses that do not qualify for Victorian Government support programs because they are not registered for GST. This will be administered through Services Australia, the payment is set at \$450 for people who have lost from eight and up to 20 hours work or a full day of work (over seven days), and \$750 for 20 hours or more of work lost. People who receive certain Commonwealth income support are eligible to receive a \$200 payment.
- **Business Costs Assistance Program:** the Business Costs Assistance Program provides support for businesses that are significantly affected due to the lockdown but continue to incur costs. More than 110,000 businesses in metropolitan Melbourne will automatically receive payments of \$5,600 (\$2,800 per week).
- **Licensed Hospitality Venue Fund:** automatic payments of \$5,000, \$10,000 and \$20,000 per week will be made to about 7,000 licensed hospitality premises in metropolitan Melbourne that have previously received grants under the Licensed Hospitality Venue Fund 2021 or July Extension programs. There will be a tiered approach for the relief in accordance with capacity of the premises: \$5,000 for a capacity of up to 99 patrons, \$10,000 for a capacity of 100 to 499 patrons and \$20,000 for a capacity of 500-plus.
- **Alpine Business Support Program:** Alpine businesses will receive between \$5,000 (off-mountain) and \$20,000 (employing businesses, on mountain) under the "Alpine Business Support Program".
- **Small Business COVID Hardship Fund:** the fund allows for grants increasing from \$10,000 to \$14,000 and are available to small- and medium-sized businesses across the State.

More information about the business programs is available at the [Business Victoria website](#).

Victorian rental relief for commercial tenants

The [Commercial Tenancy Relief Scheme Act 2021](#) (Vic), which has received assent, temporarily empowers the making of regulations to provide rent relief to commercial tenants in Victoria that have experienced a loss in turnover of more than 30% during COVID-19. The Act came into operation on 10 August 2021 and will sunset on 30 April 2022 (with the Regulations remaining in force until 30 October 2022).

Rent relief for eligible tenants will be calculated under the scheme by comparing their turnover for the final quarter of the 2020-21 financial year with turnover from the final quarter of 2018-19. Tenants will be eligible for the scheme if the drop in turnover is greater than 30%. The percentage drop will also determine the amount of initial rent relief available to the tenant. Special arrangements will apply to assess the turnover impacts for new businesses which were not operating in 2019.

For eligible applications where there is also an agreement already in place from the first Commercial Tenancy Relief Scheme, existing deferred rent repayment requirements will be frozen until 15 January 2022, when the outstanding amount will be added to the deferred rent accrued during the current Scheme. Commercial landlords cannot issue an eviction notice for eligible tenants without obtaining a direction from the [Victorian Small Business Commission \(VSBC\)](#). The protections are backdated to start from when the scheme was [announced](#) on 3 August 2021. Tenants and landlords are encouraged to enter negotiations as soon as possible. The VSBC is available to provide mediation if parties cannot reach a satisfactory agreement.

NSW land tax relief/tenancy support payments

The NSW Minister for Finance and Small Business [has announced](#) that the State will re-introduce the National Cabinet's Mandatory Code of Conduct for Commercial Leasing to mandate rent relief for eligible tenants impacted by COVID-19. There is also a possibility of a monthly grant of up to \$3,000 for small commercial or retail landlords who provide rental waivers of at least the value of the grant and any land tax relief they are eligible for.

The Retail and Other Commercial Leases (COVID-19) Regulation 2021 will be extended until 13 January 2022, ie for six months. It will require landlords to renegotiate rent having regard to National Cabinet's Code of Conduct. This requires landlords to provide rent relief in proportion with their tenant's decline in turnover. Of the rent relief provided, at least 50% must be in the form a waiver, and the balance a deferral.

The Regulation applies to commercial and retail tenants with a turnover of up to \$50 million who qualify for the COVID-19 Microbusiness grant, COVID-19 Business Grant or JobSaver Payment. It will prohibit a landlord from evicting or locking out a tenant for certain breaches of the lease unless they have first renegotiated rent and attempted mediation.

The release states that more information for landlords and tenants will be published on the Service NSW [website](#) "soon".

The NSW Minister for Finance and Small Business has also [advised](#) that applications are open for eligible commercial and residential landlords to claim land tax relief or a tenancy support payment. This is designed for landowners who provide rental reductions to tenants in financial distress due to COVID-19 for the period 1 July 2021 to 31 December 2021.

Residential landowners can choose between land tax relief of up to 100% of their land tax liability for 2021 or a payment of \$1,500 per tenancy agreement. Commercial landlords are only eligible for the land tax relief. The eligibility requirements are slightly different for each.

In both cases, the landowner must have reduced rent for the affected tenant by at least the amount being claimed for any period between 1 July 2021 and 31 December 2021. Landowners cannot require their tenants to repay the reduced rent they claim through the rebates.

Further details about eligibility can be found on the [Services NSW website](#). Applications are to be made online.

QLD: further COVID-19-related support measures

The Federal Treasurer and the Queensland Treasurer has issued a [joint media release](#) outlining new COVID-19 support measures for businesses in Queensland.

As part of the package, additional support for businesses that have had a decline in turnover of more than 30% will include:

- a \$1,000 one-off grant to non-employing sole traders across Queensland;
- payroll-based support for all businesses across Queensland (again that have had a decline in turnover of more than 30%);
- a \$5,000 one-off, top-up grant to small business with payroll of less than \$1.3 million;
- a \$10,000 one-off, top-up grant to medium sized business with payroll between \$1.3 million and \$10 million; and
- a \$25,000 one-off, top-up grant to large sized tourism and hospitality focused businesses only with payroll of greater than \$10 million.

Applications have opened on the Business Queensland [website](#).

SA COVID-19 business support measures

In a [joint media release](#), the Federal and the SA Governments have announced a jointly funded package between the Governments to provide financial support to SMEs impacted by COVID-19. The new South Australian COVID-19 Additional Business Support Grant package includes:

- \$3,000 cash grants for employing businesses and \$1,000 for non-employing businesses (eg sole traders) in eligible industry sectors that have experienced a decline in turnover of 30% or more over a two week period as a result of the COVID-19 trading restrictions introduced from 28 July 2021.
- An additional CBD grant of \$1,000 will be available for eligible businesses (both employing and non-employing) with a commercial premise in the Adelaide CBD (postcode 5000), in recognition of the increased impact on city businesses as a result of people working from home.

Applications for the COVID-19 Additional Business Support Grant are expected to open on 13 August 2021 and close on 17 October 2021.

The Additional Business Support Grant is in addition to the \$100m Business Support Package, announced during the state's recent seven day lockdown - \$3,000 emergency cash grant for SMEs announced by the SA Premier on 21 July 2021.

The SA Government is also funding a new Major Events Support Grant of up to \$25,000 for eligible events that were either cancelled, or suffered a significant financial loss, as a result of having to be cancelled or postponed due to the COVID-19 lock down in July or further restrictions in August.

Further details can be found at the [Department of Treasury and Finance website](#).

ACT: COVID-19 relief package for SMEs

In a [media release](#), the ACT and Federal Governments have announced a jointly funded ACT COVID-19 Business Support Grant which will provide grants of \$3,000 for employing businesses (and \$1,000 for non-employing businesses) where turnover has declined by 30% or more as a result of the COVID-19 health restrictions. The 30% reduction in turnover will be measured for the week defined as Friday 13 August - 20 August 2021 (compared to the prior seven day period) due to restricted trading conditions. The Treasurer said further jointly funded programs will be considered if the ACT lockdown period is extended.

The ACT Government also announced the opening of a COVID-19 Small Business Hardship Scheme, where eligible ACT businesses can apply for credits (for payroll tax, utilities, rates and certain business licences) of up to \$10,000 (inclusive of GST) per ABN. This will be available for SMEs with a turnover between \$30,000 and \$10 million per annum that can demonstrate a 30% revenue loss in revenue.

The Federal Treasurer and the ACT Chief Minister [have advised](#) that the COVID-19 Business Support Grants will be extended. This is as a result of the extension of the ACT lockdown to 2 September 2021.

There are no changes to the measures in the package, which were announced on 13 August 2021. Further details on business support are available on the ACT Government Business Hub [website](#).

TAS: key industries to receive COVID-19 support

The Tasmanian and Federal Governments have [announced](#) a jointly funded COVID-19 relief package specifically targeted at businesses operating in tourism, hospitality, arts and events, seafood and transport (hire car, coach tours) sectors, as well as those that have been "impacted directly by reduced interstate visitation".

The package, which commenced on 17 August 2021, comes in between \$2,000 to \$10,000 to be made available to eligible businesses that have suffered a 30% decline in their turnover. The grants will be non-competitive and assessed in order of receipt.

Full details about the program can be accessed on the [Business Tasmania website](#).

TPB update: CPE credit for COVID-19 assistance learning

The TPB has announced a [relaxation of its continuing professional education](#) (CPE) requirement to allow practitioners to claim CPE for activities which improve a practitioner's knowledge and skills about the COVID-19 financial assistance packages offered by the States and Territories. This could include attending webinars or other learning events focused on the financial assistance packages. The CPE concession acknowledges that tax practitioners need to help businesses to access the different financial relief offered by each State and Territory in order to fulfil their obligation to act lawfully in the best interest of their clients and with competency.

The TPB has also released an [FAQ to help tax practitioners understand their Code of Professional Conduct](#) obligations associated with the various financial relief packages from each State and Territory. The FAQ relates to types of services rendered and Code considerations when advising on support packages.

TPB: Beyond Blue's small business owners program counts as CPE

The TPB has released an [article](#) discussing the stresses and challenges of running a small business through the impacts of COVID-19. The TPB goes on to suggest tax practitioners to sign up for a free and confidential mental health coaching program - Beyond Blue's [NewAccess for Small Business Owners](#) (NASBO).

The TPB said that the program will count towards its continuing professional education (CPE) under the current relaxation of its CPE requirements.

As a reminder, the amount of CPE that is claimable is capped at 10% of the overall CPE requirement. For example: if the program is 20 hours, tax agents can claim nine hours of CPE, BAS agents can claim four and a half hours and tax (financial) advisers can claim six hours.

COVID-19 Bill No 2 receives Royal Assent

The [Treasury Laws Amendment \(COVID-19 Economic Response No 2\) Bill 2021](#) has received Royal Assent as Act No 79 of 2021 after passing both Houses of Parliament. The Bill was introduced in the House of Reps on 3 August 2021 and makes amendments to the ITAA 1997 and TAA in relation to the tax treatment of Government COVID-19 Economic Response payments for businesses and individuals.

The Bill was passed without amendment by the House of Reps on 3 August 2021 and then passed by the Senate on 5 August 2021 with one amendment by Independent Senator, Rex Patrick. The Senate amendment proposed to require the Commissioner to publish details about each entity (with annual turnover of \$10m or more) that received a JobKeeper payment or a Coronavirus economic response payment. This was disagreed to by the House of Reps and returned to the Senate.

The Bill has been passed without the Senate insisting on its amendment.

TLA (2021 Measures No 1) Bill receives Assent

The [Treasury Laws Amendment \(2021 Measures No 1\) Bill 2021](#) received assent as Act No 82 of 2021. This means that the reforms for the electronic execution of documents, electronic notices, virtual meetings and continuous disclosure commenced on 14 August 2021.

By way of reminder, the legislation:

- extends the application of temporary relief measures relating to virtual AGMs and signing and sending electronic documents from 21 March 2021 to 31 March 2022 (originally to 15 September 2021); and

- provides that all civil penalty proceedings commenced under the continuous disclosure and misleading and deceptive conduct provisions must prove that an entity or officer acted with "knowledge, recklessness or negligence" in respect of an alleged contravention.

Senate amendments agreed by House of Reps

When in Bill form, the legislation was subject to Senate amendment. The 12 amendments passed by the Senate on 9 August 2021, among other things, were:

- to extend the temporary relief in relation to virtual AGMs and electronic documents up to 31 March 2022 (instead of the proposed end date of 15 September 2021);
- to accord ASIC permanent powers the flexibility to provide individual or class order relief in relation to meetings and sending documents. ASIC will be able to provide this relief in circumstances beyond companies' control, such as those caused by COVID-19;
- to remove the requirement for companies and registered schemes to notify members of their right to opt in to receive meeting related documents in hard copy, ie they will not have to notify within two months of the Bill passing and within two months of a person becoming a member;
- a review of the amendments relating to the continuous disclosure rules within six months after the second anniversary of it commencing.

Bill (No 5) 2021 passed by Reps

The [Treasury Laws Amendment \(2021 Measures No 5\) Bill 2021](#) has been passed by the House of Reps without amendment and is now before the Senate. The Bill includes: (i) reforms to the Australian Screen Production Incentive; and (ii) consequential matters arising from the corporate insolvency reforms. It also makes miscellaneous and technical amendments covering tax, super and GST.

Bill (No 6) 2021 introduced

The [Treasury Laws Amendment \(2021 Measures No 6\) Bill 2021](#) has been introduced in the House of Reps. It contains the following previously-announced measures:

- Super fund actuarial certificates - the ITAA 1997 will be amended to remove the requirement for certain super fund trustees to provide an actuarial

certificate when calculating exempt current pension income (ECPI) using the proportionate method, where all members of the fund are fully in retirement phase for all of the income year. Date of effect: Applicable to assessments for 2021-22 and later income years.

- Super information for family law - the TAA and the Family Law Act 1975 will be amended to create a new mechanism for sharing superannuation information by parties to family law proceedings, leveraging information held by the ATO. Date of effect: 1 April 2022.
- Electricity large-scale generation refunds - will amend the ITAA 1997 to make refunds of large-scale generation shortfall charges non-assessable non-exempt (NANE) income. Date of effect: Applicable to refunds paid on or after 1 January 2019. (Note this measure was previously introduced as part of the Treasury Laws Amendment (2020 Measures No 4) Bill 2020, which is still before the Senate.)
- Competition - the Bill will also amend the Competition and Consumer Act 2010 in relation to industry codes (eg franchising), including an increase for the maximum penalty amount that can be included in regulations. Date of effect: Day after Royal Assent.

Accommodation, food and drink allowances

The ATO has issued [Taxation Ruling TR 2021/4](#) and the accompanying [Practical Compliance Guideline PCG 2021/3](#).

TR 2021/4 (which finalises 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 and a living-away-from-home-allowance benefit.

The ATO states that while accommodation and food/drink expenses are ordinarily private or domestic in nature, they 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 are non-deductible living expenses, even if the employee is living at that location due to their employment.

PCG 2021/3 (which finalises Draft PCG 2021/D1) sets out a compliance approach to enable eligible employers to easily determine 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 no more than 90 days in an FBT year (and no more than 21 consecutive days).

Date of effect: retrospective.

GST-free cars for disabled: transitional arrangements

The ATO has registered the legislative instrument [Taxation Administration \(Remedial Power – Certificate for GST-free supplies of Cars for Disabled People\) Repeal and Transitional Arrangements Determination 2021](#).

This instrument does two things, namely it:

- repeals the Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 (the "2020 Determination"); and
- provides for transitional arrangements relating to current disability certificates issued under the 2020 Determination.

The measures in the 2020 Determination are now contained in the Treasury Laws Amendment (2021 Measures No 5) Bill 2021 – hence the need for the 2020 Determination to be repealed (which will apply from the date of assent of the No 5 Bill, which is still before Parliament). For practitioners, the more interesting aspect concerns the transitional measures.

Under the transitional arrangements, current disability certificates issued under s 38-510(1)(a) and current certificates of medical eligibility issued under the 2020 Determination that were in force immediately prior to this date will have effect as if

they were issued by a medical practitioner in the approved form under that item. This will ensure that individuals who hold certificates issued before all the changes were made are able to continue to use them. However, disabled individuals will still need to satisfy the other requirements of s 38-510 to be eligible to access GST-free supplies of cars and car parts.

FINANCIAL SERVICES

Disciplinary body for financial advisers: policy paper

The Government has released a [policy paper](#) on aspects of the proposed disciplinary body for financial advisers that will be set out in Regulations.

The legislative framework to establish the single disciplinary body for financial advisers is set out in the [Financial Sector Reform \(Hayne Royal Commission Response - Better Advice\) Bill 2021](#). The Bill, which is currently before the Senate, provides for the new disciplinary body to be administered by the Financial Services and Credit Panel (FSCP) within ASIC, and will require the registration of all financial advisers who provide personal financial advice to retail clients.

The policy paper seeks feedback on elements of the Bill that will be set out in Regulations, including (i) the circumstances when ASIC must convene a FSCP to consider alleged financial adviser misconduct; and (ii) the types of administrative sanctions made against a financial adviser that must be included on the Financial Advisers Register.

Submissions are due by 20 August 2021. The Government intends to release Draft Regulations in late 2021 for further consultation. The Regulations will come into force on 1 January 2022, subject to passage of legislation.

Internal dispute resolution: financial services breach reporting

The [ASIC Corporations and Credit \(Breach Reporting - Reportable Situations\) Instrument 2021/716](#) has been registered and provides ASIC administrative relief to exclude certain breaches of the Internal Dispute Resolution (IDR) standards from being a "reportable situation".

A failure to comply with the IDR standards ([Instrument 2020/98](#)) is technically a breach of a civil penalty provision that is subject to the breach reporting obligations under s 912D of the Corporations Act 2001. Instrument 2021/716 temporarily modifies the law to exclude non-compliance with the IDR standards from the situations deemed to be "significant" breaches that AFS licensees would otherwise be required to report.

Date of effect: 5 October 2021 (to sunset in three years on 5 October 2024).

Compensation from financial service providers

The ATO has released a [Fact Sheet](#) on the super contribution cap implications of allocating compensation from a financial service provider to a person's superannuation account.

Where a member personally engaged the financial services provider and had a right to compensation, the compensation will be a concessional contribution if it is paid directly to the super fund other than at the member's direction. If the payment results in the member exceeding their concessional contribution cap, the ATO may be willing to exercise the discretion to disregard the excess contribution or reallocate it to another year. The compensation will be a non-concessional contribution (and the ATO is unlikely to exercise the discretion) if it was initially paid to the member and subsequently contributed as a personal contribution, or the member directed that it be paid into the fund.

If the fund trustee had the right to seek compensation (through a request for financial advice to fund members), any compensation allocated to a member's account will not be a contribution and will therefore not affect the contribution caps.

SUPERANNUATION

Your Future, Your Super reforms: regs

The following Regulations have been registered to support the Government's Your Future, Your Super reforms (which were implemented by the Treasury Laws Amendment (Your Future, Your Super) Act 2021):

- [Treasury Laws Amendment \(Your Future, Your Super - Single Default Account\) Regulations 2021](#) - if a new employee (who has started their employment on or after 1 November 2021) does not have a chosen fund, but has an existing "stapled" fund, an employer will need to comply with the choice of fund rules by making contributions to the employee's stapled fund. The Regulations define a "stapled fund" in reg 17A of the Superannuation Guarantee (Administration) Regulations 2018, including tie-breaker rules for determining which fund is to be an employee's stapled fund where they have multiple existing funds. The Regs also set out procedural matters relating to requests to and responses from the ATO about stapled funds.
- [Treasury Laws Amendment \(Your Future, Your Super - Addressing Underperformance in Superannuation\) Regulations 2021](#) - support the SIS Act provisions that require APRA to conduct annual performance tests; the circumstances where products are to be treated as combined; the form and content for notices about failing a test; the circumstances where APRA may lift an underperformance prohibition on a trustee; and the formulas for ranking Part 6A products for use in the Government's YourSuper comparison tool. Trustees of super funds providing "Part 6A products" must give notice to its beneficiaries if it has failed a performance test conducted by APRA. Members will be notified by 1 October 2021 if their fund fails this test. Where a product has failed the performance test in two consecutive years, the trustee may be prohibited from accepting new beneficiaries into that product.
- [Superannuation Industry \(Supervision\) Amendment \(Your Future, Your Super - Improving Accountability and Member Outcomes\) Regulations 2021](#) - amend the SIS Regs and the Corporations Regulations 2001 to: (i) prescribe the information that must be provided with a notice for an annual members' meeting; and (ii) remove an exception to the employer kickback rule.

Date of effect: 6 August 2021.

The Treasurer [said](#) the Regulations ensure the final methodology applied for the APRA annual performance test will see the administration fee component of the test based on the administration fee charged by the product over the most recent

financial year, benchmarked against peers. Mr Frydenberg said Regulations to prescribe how information must be provided under the portfolio holdings disclosure (PHD) regime will be finalised "in coming weeks".

Super COVID-19 re-contribution: ATO update

In an [alert](#) to super funds, the ATO has confirmed that individuals can now re-contribute superannuation amounts they withdrew under the COVID-19 early release program without them counting towards their non-concessional contributions cap. The ATO advised that its approved form for making COVID-19 re-contributions is expected to be available by the end of August 2021.

COVID-19 re-contribution amounts are not a new type of contribution, rather they are a personal contribution that receives a treatment to exclude it from an individual's non-concessional contribution cap. Individuals can make COVID-19 re-contributions to any fund of their choice where the fund rules allow. Each COVID-19 re-contribution amount must be detailed on a separate approved form and cannot exceed \$20,000 per approved form.

COVID-19 re-contribution amounts will need to be reported by super funds to the ATO via MATS as a personal contribution. The ATO has requested funds to record and hold the required information until it finalises the functionality to enable funds to use the Bulk Data Exchange facility via the Business Portal. The ATO said it is working through the process for SMSFs and will advise that in due course.

Super fund members' meetings: ASIC areas of improvement

ASIC has [released](#) its findings about superannuation funds' annual members' meetings. While ASIC did not identify any significant failures by the funds to comply with their obligations to hold members' meetings, ASIC said trustees need to improve their communication with members and provide better opportunities for members to ask questions at meetings.

ASIC also called on trustees to share Q&A with the broader membership of the fund and provide a video recording of the meeting, in addition to the minutes. ASIC noted that members were most interested in the topics of cybercrimes; environmental, social and governance; fund performance and fees; impact of COVID-19, and the super guarantee.

ATO issues Div 293 super assessments

The ATO has [reported](#) that it has recently issued a backlog of 30,000 Div 293 assessments for the 2018-19 and 2019-20 financial years after resolving a "system issue". The ATO said concessional contributions reported for these financial years were originally not included in Div 293 assessments where that super account was also reported as closed during that financial year. Individuals above the \$250,000 high-income threshold are subject to the additional 15% Div 293 tax on their "low tax contributions" (ie concessional contributions).

The ATO said this reporting issue was resolved in June 2021 and the 30,000 affected members should now expect to receive either an initial or amended Div 293 assessment for those years. Taxpayers who receive these assessments are advised that the ATO has now included the concessional contributions they made to a super account that had been closed. A taxpayer has the option of paying the Div 293 tax liability using their own money, or by electing to release an amount from an existing super balance by completing a [Div 293 election form](#).

SMSFs: ABR updated to accept more than four members

SMSFs and small APRA funds can have up to 6 members from 1 July 2021 following legislative amendments. The ATO has [advised](#) that the Australian Business Register (ABR) has been updated to enable SMSFs to add a fifth or sixth member instead of using the interim process.

Before an SMSF can be created, or additional members added, the ATO said it is important to note that some State and Territory laws restrict the number of trustees a trust can have to less than six. In such cases, an SMSF with five to six members may need to consider using a corporate trustee in order to satisfy the trustee limit in State or Territory legislation. The ATO also recommends seeking professional advice.

MySuper investment performance testing: APRA approach

APRA has released an [information paper](#) on its approach to combining MySuper investment performance histories for the purposes of its performance testing. The information paper sets out APRA's approach to administering the performance test and providing investment performance data to the ATO for inclusion in the

[YourSuper comparison tool](#). The performance test applies to MySuper products from 1 July 2021 (and to trustee-directed products from 1 July 2022).

REGULATOR NEWS

TPB corporate plan 2021-22

The TPB has released its [Corporate Plan for 2021-22](#) highlighting the strategic objectives for the year:

- Efficient registration of tax practitioners - improving the registration experience, process efficiency etc;
- Effective compliance through education - deterrence and sanctions, eg timely and informative guidance and advice, effective data analytics use for compliance action; and
- Innovation and preparation for future - working with the Government to implement reforms to the Tax Agent Services Act 2009 and the TPB (including funding requirements), delivering an ongoing technology program to support enhanced services and drive operational efficiency etc.

TPB welcomes new Board member

The TPB has [welcomed](#) Mr Peter Hogan as a new Member to the Board. Mr Hogan was appointed by Treasury on 10 August 2021 to replace former Board member Mr Jim Hawson who resigned from the Board earlier this year.

Mr Hogan is a Chartered Accountant who started his career at the ATO and retired as a corporate tax partner with PricewaterhouseCoopers. He is on the Advisory Board of the Australian Charities and Not-for-profits Commission, has served as a non-executive director of several public companies, and continues to serve on boards of charities.

NSW COVID-19 business support - Working Group established

Service NSW and NSW Treasury officials have agreed to meet weekly with IPA, CA ANZ, CPA, and The Tax Institute to identify and address issues of concern for



accountants helping clients access NSW COVID-19 business support. The first meeting was held last week.

We expect these discussions will lead to updated guidelines and more Q&A on the Service NSW web pages for the various programs (particularly JobSaver and the Micro Business Grant).

Members can submit issues (whether technical or administrative) to the Advocacy team attention irwin.bushnell@publicaccountants.org.au.