

## **TAXATION**

### **New TPB Chair appointed**

The Government has announced the appointment of Mr Ian Klug AM as the new Chair to the Tax Practitioners Board (TPB).

### **Former ATO Deputy Commissioner Cranston found not guilty**

Former ATO Deputy Commissioner Michael Cranston has been found not guilty of misusing his position to benefit his son.

### **Disallowance of deduction for relocation costs for ADF member upheld**

AAT has upheld the Commissioner's decision to disallow a deduction to an ADF member for certain relocation expenses incurred in moving from Canberra to Perth.

### **Property used for storage an active asset**

AAT has decided that a property used to store materials, tools and other equipment was an active asset for the purpose of the small business CGT concessions.

### **ATO public beta online services rollout continues**

ATO says online services for agents in public beta is now available to all BAS agents, and all tax agents are expected to have access by the end of March 2019.

### **Resolving tax disputes with ATO: Govt help for small businesses**

Government has announced additional features to support small businesses as part of its proposal to establish a Small Business Concierge Service.

### **ATO referring overdue lodgment obligations to external agencies**

The ATO says it has started referring taxpayers with overdue lodgment obligations to an external collection agency focusing on income tax and activity statement lodgments.

### **ATO flexible about STP reporting: more time to report**

Parliament has now passed legislation to extend Single Touch Payroll (STP) reporting to include all small employers (those with fewer than 20 employees) from 1 July 2019.

### **Amounts to be notified under STP - Determination registered**

The Single Touch Payroll – Determination of Amounts to be Notified was registered on 12 February 2019.

### **Increased penalties for white collar crime: Bill amended**

The Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018 was passed by the Senate on 14 February 2019.

### **Business registries and director identification numbers: Bill introduced**

Government has introduced a package of Bill to create a modern business registry regime and introduce a director identification number (DIN) requirement.

### **Extending and increasing instant asset write-off threshold**

Treasury Laws Amendment (Increasing the Instant Asset Write-Off for Small Business Entities) Bill 2019 has been introduced in the House of Representatives.

### **Company losses “similar business” test: Bill awaits Assent**

Treasury Laws Amendment (2017 Enterprise Incentives No 1) Bill 2017 has passed all stages and awaits Royal Assent.

### **Taxable payments reporting: ATO update**

ATO has advised that businesses in building and construction are required to lodge a TPRS annual report each year.

## **North Qld floods tax relief: lodgment and payment deferrals**

The ATO has announced that refunds will be fast-tracked for people affected by the recent floods in North Queensland.

## **Termination payments from redundancy trusts: draft Determination**

This determination extends the definition of employment termination payment to include certain payments from redundancy trusts.

## **GST: low-value imported goods (Addendum to GSTR 2004/1)**

This Addendum updates GSTR 2003/15 for the 2018 measure to impose GST on supplies of imported low-value goods (i.e goods with a customs value of A\$1,000 or less).

## **Combating illegal phoenixing: directors liable for GST**

This Bill proposes to make the following amendments: director accountability; company directors liable for GST; retain tax refunds; and introduce new phoenixing offences.

## **Taxpayer not entitled to input tax credits as no enterprise**

AAT has decided that the taxpayer was not carrying on an enterprise of private investigations, nor an enterprise of share trading: *NKCX and FCT*.

## **TPB welcomes new Chair and Board appointments**

Today the Treasurer, the Hon Josh Frydenberg MP, has announced the appointment of Board member, Mr Ian Klug AM, as the new Chair of the Tax Practitioners Board (TPB).

## **Whistleblower protections**

The [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Bill 2017](#) awaits Royal Assent having been passed by the House of Reps on 19 February 2019 without amendment.

## **FINANCIAL SERVICES**

### **AFCA to consider legacy complaints back to 2008**

The Government has directed the Australian Financial Complaints Authority (AFCA) to consider financial complaints dating back to 1 January 2008.

### **FASEA Code of Ethics finalised**

Financial Adviser Standards and Ethics Authority (FASEA) has registered its Code of Ethics for financial planners and advisers.

### **ASIC banning order for dishonest conduct reduced by 8 1/2 years**

AAT has reduced from 10 years to 18 months an ASIC banning order for 2 former financial planners with Macquarie Bank: *Campbell and ASIC*.

## **SUPERANNUATION**

### **Superannuation insurance opt-in rule for low-balances: Bill introduced**

This Bill proposes to amend the SIS Act to prevent insurance within super from being provided on an opt-out basis for balances under \$6,000 and members under 25 years old.

### **ATO confirmation of complying status for new SMSFs**

ATO has advised that, from early March 2019, the timeframe for new SMSFs to become "Complying" on Super Fund Lookup (SFLU) will be shorter.

### **SMSF establishment advice results in enforceable undertaking**

ASIC has accepted an enforceable undertaking from a Gold Coast accountant following allegations that she failed to act in the best interests of her clients.

### **STP exemption for employer super contributions - Determination**

Determination provides for the ATO to exempt all employers from reporting under STP in relation to certain super contribution amounts paid by them to a complying fund.

### **Super Member Outcomes Bill passes Senate**

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill 2017 has been passed by the Senate.

### **SMSF membership limit increase to 6: Bill introduced**

Treasury Laws Amendment (2019 Measures No 1) Bill 2019 has been introduced in the House of Representatives.

### **Mistaken Super Guarantee contributions recoverable by employer**

Supreme Court of South Australia has ruled that a supermarket group was entitled to recover superannuation contributions made by mistake in respect of exempt employees.

**REGULATOR NEWS****ASIC update on Banking Royal Commission implementation**

ASIC has published an Update on its planned actions responding to the recommendations of the Banking Royal Commission final report.

**ASIC to pursue harsher penalties against banks after Senate passes laws**

ASIC says (in release 19-032MR) that it will shortly be able to pursue harsher civil penalties and criminal sanctions against banks, their executives and others.

**APRA's plan to implement Royal Commission recommendations**

APRA has provided an update on its plans for implementing the recommendations from the Banking Royal Commission final report.

**Govt appoints expert panel for APRA capability review**

The Treasurer has appointed an expert panel to lead a capability review of APRA as part of the Government's response to the recommendation by the Banking Royal Commission.

## **TAXATION**

### **New TPB Chair appointed**

The Government [has announced](#) the appointment of Mr Ian Klug AM as the new Chair to the Tax Practitioners Board (TPB). The Government also welcomes the appointment of new member Ms Debra Anderson, and the reappointment of Dr Julianne Jaques, Mr Greg Lewis and Mr Jim Hawson, who will all serve for a 3-year period.

The Government thanked outgoing Chair Mr Ian Taylor for "his significant contribution over the last 6 years".

### **Former ATO Deputy Commissioner Cranston found not guilty**

[ABC News has reported](#) that former ATO Deputy Commissioner Michael Cranston has been found not guilty of misusing his position to benefit his son. During a 3-week NSW District Court trial before Tupman J, a jury heard allegations Mr Cranston attempted to set up a meeting between the ATO and payroll company Plutus in 2017, with which his son was involved.

The company's accounts were frozen by the ATO due to alleged unpaid tax. The Crown alleged that Mr Cranston had a conflict of interest. The jury took just over 2 days to reach its not guilty verdict.

### **Disallowance of deduction for relocation costs for ADF member upheld**

The AAT has upheld the Commissioner's decision to disallow a deduction to an ADF member for certain relocation expenses incurred in moving from Canberra to Perth. The taxpayer was at the relevant time an employee of the Department of Defence, and claimed tax deductions for relocation expenses incurred in the income years ended 30 June 2015 and 30 June 2016. ([McKenzie and FCT \[2019\] AATA 77](#), AAT, Humphries AO DP, AAT File Nos: 2018/0844 and 2018/0845, 31 January 2019.)

The AAT considered that the expenses bore "too remote a relationship to gaining or producing income to be deductible. The mere fact of a connection between the 2 is insufficient." The Tribunal found the taxpayer failed the onus on him to establish that his relocation expenses were deductible.

## Property used for storage an active asset

The AAT has decided that a property used to store materials, tools and other equipment was an active asset for the purpose of the small business CGT concessions: [Eichmann and FCT](#) [2019] AATA 162 (AAT, File No: 2017/5571, Hanger DP, 15 February 2019). After the taxpayer sold the property in October 2016, the ATO issued a private ruling that the taxpayer was not entitled to apply the small business CGT concessions to the capital gain as the property had not been an active asset within the meaning of the ITAA 1997.

The AAT, however, concluded that the extent of the use of the land was far from minimal, or incidental to the carrying on of the business. Accordingly, the property was "used, or held ready for use, in the course of carrying on a business" and was an active asset in terms of s 152-40.

## ATO public beta online services rollout continues

[ATO says](#) online services for agents in public beta is now available to all BAS agents, and all tax agents are expected to have access by the end of March 2019.

The ATO has issued emails to all BAS agent practices asking them to join the Online services for agents in public beta. Email invitations to tax agent practices have also started to issue. The ATO encourages agents to take a look, start to use the system and tell the ATO what they think by using the Give us feedback link at the bottom of each page.

## Resolving tax disputes with ATO: Govt help for small businesses

The Government has [announced](#) additional features to support small businesses as part of its proposal to establish a Small Business Concierge Service within the Australian Small Business and Family Enterprise Ombudsman's office. This service, previously announced on 29 November 2018 and now to be available from 1 March, will provide support and advice about the Administrative Appeals Tribunal (AAT) process.

The Assistant Treasurer, Stuart Robert, said that, prior to applying to the AAT, the Government will provide small businesses without legal representation one hour of legal advice on payment of a \$100 co-payment. After paying the AAT a reduced application fee to review an adverse ATO decision, such as affirming an audit or cancelling an ABN registration, Mr Robert said the small business will have a



dedicated case manager throughout the process. Unrepresented small businesses may receive an additional hour of free legal advice.

### **ATO referring overdue lodgment obligations to external agencies**

The ATO says it has [started referring taxpayers](#) with overdue lodgment obligations to an external collection agency focusing on income tax and activity statement lodgments on the ATO's behalf. It warns tax practitioners that some of these may be their clients. It also says referral to an external collection agency doesn't affect a taxpayer's credit rating.

If a case is referred to an agency to obtain overdue lodgments, the ATO says they will notify the taxpayer in writing before phoning them or their authorised contact. Letters issued by an external collection agency will include their company name and contact details, and details of lodgment obligations the taxpayer needs to give priority to. When an agency contacts a taxpayer, they will work with the taxpayer to reach agreement on how they can lodge and subsequently pay any debt.

### **ATO flexible about STP reporting: more time to report**

Parliament has now passed legislation (the [Treasury Laws Amendment \(2018 Measures No 4\) Bill 2018](#)) to extend Single Touch Payroll (STP) reporting to include all small employers (those with fewer than 20 employees) from 1 July 2019. STP is pay day reporting by employers to the ATO as it happens, this reporting having started on 1 July 2018 for large employers (20 or more employees).

The [Commissioner said](#) the ATO understands that there will be circumstances where more time is needed to implement STP or lodge reports. He also said the ATO recognises that many small businesses and other small employers do not currently use commercial payroll software and "they will not be required to purchase such software to report under STP". The ATO is working with software providers to develop low and no-cost reporting solutions including simple payroll solutions, portals and mobile apps. Mr Jordan said the ATO will publish a list of providers on its website at [ato.gov.au/stpsolutions](http://ato.gov.au/stpsolutions).

## **Amounts to be notified under STP - Determination registered**

The [Single Touch Payroll – Determination of Amounts to be Notified](#) was registered on 12 February 2019. Made under s 389-5(3) of Sch 1 to the TAA, it determines the information which the approved form may require to be reported through Single Touch Payroll for the purposes of s 389-5(2) of Sch 1 to the TAA.

Date of effect: 1 July 2018.

## **Increased penalties for white collar crime: Bill amended**

The [Treasury Laws Amendment \(Strengthening Corporate and Financial Sector Penalties\) Bill 2018](#) was passed by the Senate on 14 February 2019 with 35 Opposition amendments concerning penalties to be imposed. Most of those amendments increase the term of imprisonment from 5 years to 15 years (instead of 10 as proposed in the original Bill) for certain criminal offences. The Bill now goes back to the House of Representatives for consideration of those amendments.

The Bill as introduced proposed to double the term of imprisonment from 5 years to 10 years for certain criminal offences. New formulae will apply to calculate the maximum financial penalties for criminal offences in the Corporations Act. Civil penalties will also be increased significantly for corporations and for individuals. Also, new ordinary criminal offences will sit alongside existing strict and absolute liability offences. These offences will attract a higher penalty than the equivalent strict and absolute liability offences.

## **Business registries and director identification numbers: Bill introduced**

The Government has introduced a package of Bills, including the [Commonwealth Registers Bill 2019](#), to create a modern business registry regime and introduce a director identification number (DIN) requirement. The legislation will enable the Australian Business Register and the business registers administered by ASIC to be moved to a modern registry platform that will be administered by the Australian Business Registrar within the ATO, as announced in the 2018-19 Federal Budget.

The new business registry regime will initially apply to those registers administered by ASIC and the Australian Business Register under the Corporations Act, ABN Act, Business Names Act, Credit Act and the SIS Act. Currently this business data is hosted in different systems across various Government departments and agencies,

making it difficult for businesses to meet their registration obligations and to find information. The new law provides uniform rules for the protection and disclosure of registry information. The Assistant Treasurer, Stuart Robert, [said](#) the new regime will implement a "tell us once" for business interactions with the registry.

### **Extending and increasing instant asset write-off threshold**

The [Treasury Laws Amendment \(Increasing the Instant Asset Write-Off for Small Business Entities\) Bill 2019](#) was introduced in the House of Representatives. It proposes to amend the tax law to increase the threshold below which amounts can be immediately deducted under these rules from \$20,000 to \$25,000 from 29 January 2019 until 30 June 2020, and extend by 12 months to 30 June 2020 the period during which small business entities can access expanded accelerated depreciation rules (instant asset write-off). The change is due to take effect from 29 January 2019.

Key features of the amendments include the extension of instant asset write-off. Small business entities will be able to claim an immediate deduction for depreciating assets that cost less than:

- \$25,000, provided the asset is first acquired at or after 7.30 pm, by legal time in the Australian Capital Territory, on 12 May 2015, and first used or installed ready for use on or after 29 January 2019 but before 1 July 2020. Depreciating assets that do not meet these timing requirements for the \$25,000 or \$20,000 thresholds will continue to be subject to the \$1,000 threshold.
- \$1,000 if the asset is first used or installed ready for use on or after 1 July 2020.

### **Company losses "similar business" test: Bill awaits Assent**

The [Treasury Laws Amendment \(2017 Enterprise Incentives No 1\) Bill 2017](#) has passed all stages and awaits Royal Assent. This follows the House of Representatives, on 12 February 2019, agreeing to the 1 Government amendment passed in the Senate on 5 December 2018. That amendment removes Schedule 2 from the Bill, which means that taxpayers will not be allowed to choose to self-assess the effective life of certain intangible depreciating assets.

The Bill will supplement the "same business test" with a "similar business test" for the purposes of working out whether a company's tax losses and net capital losses

from previous income years can be used as a tax deduction in a current income year.

### **Taxable payments reporting: ATO update**

ATO [has advised](#) that businesses in building and construction are required to lodge a TPRS annual report each year on any payments to contractors and subcontractors within the industry. This data allows the ATO to identify contractors who fail to lodge returns or activity statements, fail to register for GST, use false ABNs or fail to report all of their income to the ATO.

Deputy Commissioner Deborah Jenkins said that for the financial year 2018-19, businesses that supply courier or cleaning services need to report payments made to contractors they use to deliver those courier or cleaning services using the Taxable payments annual report (TPAR). "This will need to cover all relevant transactions from 1 July 2018 to 30 June 2019. The annual report for these businesses is due by 28 August 2019," she said.

### **North Qld floods tax relief: lodgment and payment deferrals**

The ATO [has announced](#) that refunds will be fast-tracked for people affected by the recent floods in North Queensland and they will have additional time to lodge income tax returns and activity statements. Taxpayers in impacted local government areas will automatically get an additional 4 weeks to lodge and pay activity statements, tax returns and FBT returns that would normally be due in February 2019.

If a tax agent's business or their clients live in one of the identified highly affected postcodes, the [ATO says](#) automatic deferrals will be progressively applied over the next week (all deferrals granted for later dates will still apply).

### **Termination payments from redundancy trusts: draft Determination**

The Tax Office, on 12 February 2019, registered the [Income Tax: Employment Termination Payments Redundancy Trusts \(12 month rule\) Determination 2019](#) (ETP 2019/D1) to extend the definition of employment termination payment to include certain payments from redundancy trusts that are received more than 12 months after the termination of a person's employment. The Determination provides that a payment from a redundancy trust that is received more than 12 months after termination of a person's employment still qualifies as an "employment termination payment" under s 82-130 of the ITAA 1997 if:

- an application for the payment has been lodged with the trustee of the redundancy trust within 12 months of the person becoming entitled to the payment;
- the payment has been made by the trustee of the redundancy trust as soon as practicable after the receipt of the application; and
- the payment has been made no later than 2 years after the termination of the person's employment.

Date of effect: 13 February 2019.

### **GST: low-value imported goods (Addendum to GSTR 2004/1)**

The ATO has issued an [Addendum](#) to GST Ruling GSTR 2003/15 (GST: importation of goods into Australia). The Addendum updates GSTR 2003/15 for the 2018 measure to impose GST on supplies of imported low-value goods (ie goods with a customs value of A\$1,000 or less). In particular, it provides that where an offshore supply of low-value goods is connected with Australia and meets the relevant requirements, the supply is both a taxable supply and a non-taxable importation.

Date of effect: 1 July 2018.

### **Combatting illegal phoenixing: directors liable for GST**

The [Treasury Laws Amendment \(Combating Illegal Phoenixing\) Bill 2019](#) has been introduced in the House of Representatives. The Bill implements 4 components from the measure Reforms to combat illegal phoenixing announced in the 2018-19 Federal Budget and proposes to make the following amendments: director accountability; company directors liable for GST; retain tax refunds; and introduce new phoenixing offences.

The Bill has been referred to the Senate Economics Legislation Committee for report by 26 March 2019.

### **Taxpayer not entitled to input tax credits as no enterprise**

The AAT has decided that, on the evidence, the taxpayer was not carrying on an enterprise of private investigations, mercantile agent, litigation support and consultancy, nor an enterprise of share trading: [NKCX and FCT](#) [2019] AATA 124 (AAT, File No: 2017/0446, Kelly SM, 13 February 2019).

Despite his claim to the contrary, the AAT decided that there was no evidence of a business plan, no intention to engage in trade regularly, routinely or systematically and he did not operate in a business-like manner or with any degree of sophistication. The AAT also decided that the taxpayer was not carrying on an enterprise of share trading as he had not traded shares regularly, routinely and systematically during the period in question. The ATO was therefore required to cancel his GST registration, with the result that he was not entitled to claim input tax credits.

### **TPB welcomes new Chair and Board appointments**

Today the Treasurer, the Hon Josh Frydenberg MP, has announced the appointment of Board member, Mr Ian Klug AM, as the new Chair of the Tax Practitioners Board (TPB).

Mr Klug has been a member of the Board since 2015 and replaces outgoing Chair, Mr Ian Taylor, who recently concluded two terms in the role.

A Fellow of Chartered Accountants Australia and New Zealand and the Australian Institute of Company Directors, Mr Klug was made a Member of the Order of Australia in 2017 for significant service to the business sector, economic development in Queensland, accountancy and the community.

In the role of TPB Chair, Mr Klug will continue to ensure that taxation services are provided in accordance with appropriate standards of professional and ethical conduct.

‘Having been a Board member for the past three years, I feel very privileged to now be given the opportunity to chair the TPB,’ Mr Klug said.

‘I welcome the challenges of the role and will continue our work to protect consumers of tax services, and lead the TPB as an efficient and effective regulator of tax agents, BAS agents and tax (financial) advisers.’

Mr Klug thanked outgoing chair Mr Ian Taylor for his significant contribution to the TPB over the last six years.

Joining the TPB as a new Board member is Ms Debra Anderson, an experienced



BAS and tax agent who specialises in tax and technology for small business.

Ms Anderson is a Fellow of the Institute of Public Accountants and a member of the Australian Institute of Company Directors, The Tax Institute, and the National Tax and Accountants' Association.

Mr Klug and Ms Anderson have each been appointed for three years and commenced their terms on 18 February 2019.

Current Board members Mr Greg Lewis, Dr Julianne Jaques and Mr Jim Hawson have been reappointed for a further three years while Ms Julie Berry, Mr Peter de Cure, and Ms Ria Sotiropoulos continue their existing appointments until July 2020.

## Whistleblower protections

The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017* awaits Royal Assent having been passed by the House of Reps on 19 February 2019 without amendment. It was previously passed by the Senate on 6 December 2018 with 58 Government amendments. The Bill creates a single whistleblower protection regime in the Corporations Act, to cover the corporate, financial and credit sectors, and creates a new whistleblower protection regime in the taxation law (the TAA) to protect those who expose tax misconduct. The Assistant Treasurer, Stuart Robert, said large companies will be required to have a whistleblower policy to support good corporate governance and culture.

The amendments are likely to be effective from 1 July 2019 and will require public companies, large proprietary companies and superannuation trustees to draft and implement a whistleblower protection policy by 1 January 2020 (assuming a commencement date of 1 July 2019). The whistleblower protection policy must address:

- The protections available to whistleblowers.
- To whom disclosures that qualify for protection may be made, and how they may be made.
- How the company will support whistleblowers and protect them from detriment.
- How the company will investigate disclosures that qualify for protection.
- How the company will ensure fair treatment of employees of the company who are mentioned in disclosures that qualify for protection or to whom such disclosures relate.

- How the policy is to be made available to officers and employees of the company.

Companies will also likely need to address their internal risk management and compliance procedures to ensure that they adequately address whistleblower protection.

ASIC's Office of the Whistleblower will oversee the implementation of the reforms when they commence from 1 July 2019. See also [ASIC Information Sheet INFO 52](#).

### **New whistleblowing laws welcomed by ASIC**

ASIC has welcomed the passing of the **Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018**, approved by Parliament on 19 February 2019 (see para [ ] of this *Bulletin*). ASIC said these reforms will significantly improve the protections available for whistleblowers who report company misconduct.

The reforms:

- broaden the whistleblower definition to include both current and former employees, officers, and contractors, as well as their spouses and dependants, and anonymous disclosures;
- extend the protections to whistleblower reports that allege misconduct or an improper state of affairs or circumstances about any matter covered by financial sector law, as well as all Commonwealth offences punishable by imprisonment of 12 months or more;
- create civil penalty provisions, in addition to the existing criminal offences, for causing detriment to (or victimising) a whistleblower and for breaches of confidentiality;
- provide protections for disclosures to journalists and parliamentarians in certain circumstances;
- provide whistleblowers with easier access to compensation and other remedies if they suffer loss; and
- require all public companies, large proprietary companies, and corporate trustees of registrable superannuation entities to have a whistleblower policy.

ASIC's Office of the Whistleblower will oversee the implementation of the reforms when they commence from 1 July 2019. See also [ASIC Information Sheet INFO 52](#).



## **FINANCIAL SERVICES**

### **AFCA to consider legacy complaints back to 2008**

The Government [has directed](#) the Australian Financial Complaints Authority (AFCA) to consider financial complaints dating back to 1 January 2008. The Treasurer, Josh Frydenberg, said this direction will expand AFCA's remit to review eligible complaints over the same period as the cases of financial misconduct considered as part of the Banking Royal Commission final report. AFCA will consider these eligible complaints between 1 July 2019 and 30 June 2020.

To give effect to this direction, AFCA will consult on updating its rules so that it is in a position to begin receiving complaints under its expanded remit from 1 July 2019. To be eligible for review by AFCA, the dispute must not have not previously been heard, and fall within AFCA's current monetary limits and compensation thresholds of \$500,000 (for consumers); \$1 million (small businesses); and \$2 million (primary producers).

### **FASEA Code of Ethics finalised**

The Financial Adviser Standards and Ethics Authority (FASEA) has registered its [Code of Ethics](#) for financial planners and advisers. The Code sets out the values of trustworthiness, competence, honesty, fairness and diligence that advisers must always demonstrate. Following consultation, FASEA [said](#) it has clarified aspects of the Code, including the values underlying the Code, amending standards around conflicts, the best interests of the client, the effects of advice on the client, and adviser record-keeping. The [Explanatory Statement](#) accompanying the Code contains additional guidance and 4 case studies on the operation of the Code, covering superannuation rollovers, SMSF establishment, risky investments and ongoing advice fees. FASEA said it will also release shortly a guidance document including case studies for each standard.

Compliance with the Code will be monitored by ASIC's approved compliance schemes. While a failure to comply with the Code is not a criminal offence or liable for a civil penalty, ASIC can suspend or terminate the financial services licence of a relevant provider for a breach of the Code. The Code will commence on 13 March 2019 (being at the end of 30 days after it was registered on 11 February 2019). However, relevant providers are only obliged to comply with the Code from 1 January 2020.

## **ASIC banning order for dishonest conduct reduced by 8 1/2 years**

The AAT has reduced from 10 years to 18 months an ASIC banning order for 2 former financial planners with Macquarie Bank in relation to their falsifying of email exchanges with clients in the bank's compliance management system: [Campbell and ASIC](#) [2019] AATA 110 (AAT, File No: 2018/4530, Rayment DP, 8 February 2019). ASIC's Financial Services and Credit Panel banned the two financial planners from providing financial services for 10 years after the bank reported their conduct to ASIC.

The AAT agreed with ASIC that the advisers' conduct in falsifying email exchanges with clients, and saving the emails in the bank's central system for recording client advice, was "dishonest" and misleading or deceptive in breach of s 1041H of the Corporations Act 2001. However, it reduced the banning period to 18 months as regard must be had to the fact that neither their employer nor any of the clients suffered loss and the conduct involved isolated acts in a very small percentage of their overall employment.

## **SUPERANNUATION**

### **Superannuation insurance opt-in rule for low-balances: Bill introduced**

The [Treasury Laws Amendment \(Putting Members' Interests First\) Bill 2019](#), introduced in the House of Representatives on 20 February 2019, proposes to amend the SIS Act to prevent insurance within superannuation from being provided on an opt-out basis for:

- account balances less than \$6,000; and
- members under 25 years old (who begin to hold a new product on or after 1 October 2019).

Members will still be able to obtain insurance cover within their superannuation by electing to do so (ie opting-in). The Treasurer [said](#) the changes seek to prevent the erosion of super savings through inappropriate insurance premiums and duplicate cover.

Date of effect: 1 October 2019.

Note that this Bill essentially re-introduces the Government's policy proposal that was previously contained in the [Treasury Laws Amendment \(Protecting Your Superannuation Package\) Bill 2018](#). That Bill awaits Assent after being passed with Green's amendments which removed the insurance opt-in rule.

Date of effect: The Bill will apply from 1 July 2019.

### **ATO confirmation of complying status for new SMSFs**

The ATO has [advised](#) that, from early March 2019, the timeframe for new SMSFs to become "Complying" on [Super Fund Lookup \(SFLU\)](#) will be shorter. Several days after registration, the ATO says that a new SMSF will appear on SFLU as "Registered - status not determined". A few days later, the notice of compliance will issue and change the fund's status to "Complying".

Previously, the ATO said the change in status occurred when the fund lodged its first SMSF annual return. The shorter ATO timeframe for confirming a new SMSF's complying status will help to eliminate confusion about the status of the fund, and its ability to accept employer super guarantee contributions or rollovers from another fund.

### **SMSF establishment advice results in enforceable undertaking**

ASIC has accepted an enforceable undertaking from a Gold Coast accountant following allegations that she failed to act in the best interests of her clients and had prioritised her own interests above their interests. ASIC said it reviewed the accountant's advice after discovering that she was receiving referrals from Park Trent Properties Group Pty Ltd to establish SMSFs for property investments. ASIC alleged that the accountant had advised some of her clients to establish SMSFs without taking their circumstances into account. Furthermore, ASIC alleged that the accountant hadn't properly considered her clients' existing super arrangements or explored why they were interested in investing in direct residential property through an SMSF and inappropriately scoped advice by excluding insurance and retirement planning when recommending SMSFs to some of her clients;

Under the [enforceable undertaking \(EU\)](#), the accountant has agreed not to provide financial services for 3 years, effective from 13 February 2019. The accountant also agreed to inform all her former personal advice clients about the EU, and provide the contact details of her former licensee to enable contact by any former clients who have enquiries or complaints.

## **STP exemption for employer super contributions - Determination**

The [Taxation Administration – Single Touch Payroll – Exemption for Employers from Reporting Contribution Amounts Paid to a Superannuation Fund](#) was registered on 11 February 2019. Made under s 389-10(2) of Sch 1 to the TAA, it provides for the ATO to exempt all employers from reporting under STP in relation to contribution amounts paid by them to a complying superannuation fund or retirement savings account.

Date of effect: 1 July 2018.

## **Super Member Outcomes Bill passes Senate**

The [Treasury Laws Amendment \(Improving Accountability and Member Outcomes in Superannuation Measures No 1\) Bill 2017](#) has been passed by the Senate with amendments. The Government amendments to the Bill in the Senate will give effect to the following 2 recommendations by the Banking Royal Commission:

- Civil penalties for breach of covenants - Recommendation 3.7
- Civil penalties for employer "kickbacks" on default super - Recommendation 3.6.

The Bill now moves to the House of Representatives, having been introduced in the Senate on 14 September 2017.

## **SMSF membership limit increase to 6: Bill introduced**

The [Treasury Laws Amendment \(2019 Measures No 1\) Bill 2019](#) has been introduced in the House of Representatives on 13 February 2019. The Bill has been referred to the Senate Economics Legislation Committee for report by 26 March 2019. It proposes the following amendments.

- SMSF membership limit increase from 4 to 6
- Extending support for craft brewers
- Miscellaneous amendments to GST and First Home Super Saver (FHSS) scheme.

## **Mistaken Super Guarantee contributions recoverable by employer**

In a preliminary matter, the Supreme Court of South Australia has ruled that a supermarket group was entitled to recover superannuation contributions made by

mistake in respect of exempt employees under the Super Guarantee legislation (subject to any defences and time limitation yet to be determined): [\*North Adelaide Service Partnership v Retail Employees Superannuation Pty Ltd\*](#) [2019] SASC 5 (Supreme Court of South Australia, Blue J, 30 January 2019).

Following a change of the group's in-house payroll manager, the relevant director became aware in November 2014 that superannuation contributions were being made in respect of all their employees, including employees earning less than \$450 per month and part-time employees under 18 working not more than 30 hours per week. An employer is not required to make contributions in respect of such exempt employees under ss 27(2) and 28 of the Superannuation Guarantee (Administration) Act 1992.

## **REGULATOR NEWS**

### **ASIC update on Banking Royal Commission implementation**

ASIC has published an [Update](#) on its planned actions responding to the recommendations of the Banking Royal Commission final report. ASIC Chair, James Shipton, said the Update is a crucial document for ASIC as it highlights the work to date of putting ASIC on a more effective strategic footing, including creating a functionally separate Office of Enforcement.

There were 12 recommendations by Commissioner Hayne directed at ASIC, or where the Government's response requires action by ASIC, without the need for legislative change. ASIC said it is committed to fully implementing each of these. ASIC's planned actions are set out in a Table attached to the Update. Mr Shipton said ASIC looks forward to working with the Parliament, the Government, APRA and other regulators on these reforms.

### **ASIC to pursue harsher penalties against banks after Senate passes laws**

ASIC says (in [release 19-032MR](#)) that it will shortly be able to pursue harsher civil penalties and criminal sanctions against banks, their executives and others who have breached corporate and financial services law, after the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018

passed the Senate on 14 February 2019. The Bill now returns to the House of Representatives for consideration of the Senate's amendments.

The Bill implements recommendations of the ASIC Enforcement Review Taskforce by amending the Corporations Act 2001, ASIC Act 2001 as well as the National Consumer Credit Protection Act 2009 and Insurance Contracts Act 1994. It strengthens existing penalties and introduces new penalties for those who have breached the corporate laws of Australia designed to protect its citizens.

### **APRA's plan to implement Royal Commission recommendations**

APRA has provided an update on its plans for implementing the recommendations from the Banking Royal Commission final report aimed at strengthening APRA's prudential and supervisory framework. Of the 10 recommendations by Commissioner Hayne requiring APRA's direct attention, APRA said it expects to complete 9 of them by the end of 2020, while 4 are expected to be completed in 2019. APRA's plans in relation to each of the 10 recommendations are set out in a [Table](#) on the APRA website.

In terms of the next steps, APRA said it intends to incorporate further information about the activity and timeframes associated with the recommendations in future announcements about its policy work program. The first of these will be APRA's Policy Agenda for 2019, which will be published later in February 2019.

### **Govt appoints expert panel for APRA capability review**

The Treasurer has [appointed](#) an expert panel to lead a capability review of APRA as part of the Government's response to the recommendation by the Banking Royal Commission. The expert panel will comprise Graeme Samuel (Chair), together with Diane Smith-Gander and Grant Spencer.

The Treasurer said the expert panel will commence its work in March 2019, and report to Government by 30 June 2019. The panel will give specific consideration to APRA's capability to promote financial stability and its readiness to respond to issues raised by the Royal Commission and the Productivity Commission. This will include APRA's capability to regulate superannuation entities, the role of enforcement activities and coercive powers and the supervision of culture, governance and remuneration in regulated institutions.