

ASF Audits Technical Seminar

# Legs & Regs update



Aaron Dunn  
CEO, Smarter SMSF



Today's session

**State of play**

**Treasury consultations & finalised Bills**

**ATO updates**

**Other updates**

# State of play



# State of play – the caps

- Concessional contribution (CC) cap of **\$27,500 available from 1 July 2021**
- Non-concessional contribution (NCC) cap is linked as 4 x CC cap, increased to \$110,000
- Bring-forward increased up to \$330,000
- General Transfer Balance Cap ('general cap') has increased to **\$1.7 million from 1 July 2021**
  - Introduces complexities with a member's Personal Transfer Balance Cap ('personal cap')
- Total Super Balance (TSB) linked to the general cap for purposes of making non-concessional contributions



**Tracey Scotchbrook**, SMSF Association  
**Session:** Contributions Conundrum



## Indexation of general cap to \$1.7 million

The TSB thresholds for the bring forward rule from 1 July 2021 adjust as follows:

Threshold	Allowable NCCs & bring forward
\$1.70m or more	Not eligible
\$1.59m to less than \$1.70m	\$110,000
\$1.48m to less than \$1.59m	\$220,000
Less than \$1.48m	\$330,000



# Indexation from 1 July 2021

Not all caps and thresholds within the tax and super laws are impacted by indexation.

Impacted	Not impacted
✓ General Transfer Balance Cap	✗ Disregarded Small Fund Assets (DFSA)
✓ Total Superannuation Balance	✗ Unused carry forward catch up threshold
✓ Concessional contribution cap	✗ Work-test exemption threshold
✓ Non-concessional contribution cap (incl. bring-forward)	✗ TBAR threshold

# State of play

Item	Status
<ul style="list-style-type: none"> <li>Extension of the bring-forward rule for NCCs where member meets relevant TSB requirements.</li> </ul>	<p><a href="#">Treasury Laws Amendment (More Flexible Superannuation) Bill 2020</a> passed both houses and assented to an Act on 22 June 2021.</p> <p><b>Effective from 1 July 2020.</b></p>
<ul style="list-style-type: none"> <li>Increasing the maximum number of allowable members in SMSFs &amp; SAFs from four to six</li> </ul>	<p><a href="#">Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020</a> passed both houses and assented to an Act on 22 June 2021.</p> <p><b>Effective from 1 July 2021.</b></p> <p>NB. ABR was updated in August 2021 to allow for registrations for up to 6 members.</p>
<ul style="list-style-type: none"> <li>Removing the requirement for an actuarial certificate when calculating ECPI using the proportionate method, where all members of the fund are fully in the retirement phase for all the income year.</li> </ul>	<p><a href="#">Treasury Laws Amendment (2021 Measures No. 6) Bill 2021</a> passed both houses on 2 September 2021, awaiting Royal Assent.</p> <p><b>Effective from 1 July 2021.</b></p> <p>No further information from Government regarding 'choice' of method for ECPI purposes where a fund has both segregated and unsegregated periods during a financial year.</p>



**Melanie Dunn**, Accurium  
Session: Pensions & ECPI

# State of play

Item	Status
<ul style="list-style-type: none"> <li>Electronic execution measures for signing of documents (section 127 of Corporations Act 2001)</li> </ul>	<p><a href="#">Treasury Laws Amendment (2021 Measures No. 1) Bill</a> passed both houses and assented to an Act on 13 August 2021. <b>Extends the current temporary relief for the execution of documents to 31 March 2022.</b></p> <p>Treasury consultation until 16 September on exposure draft to establish permanent measures to sign and send documents using technology.</p> <p><a href="https://treasury.gov.au/consultation/c2021-203516">https://treasury.gov.au/consultation/c2021-203516</a></p>
<ul style="list-style-type: none"> <li>50% temporary minimum pension extended for 2021-22</li> </ul>	<p><a href="#">Superannuation Legislation Amendment (Superannuation Drawdown) Regulations 2021</a> amended the SIS regulations to extend the temporary reduction in minimum payment amounts for accounts-based pensions for the 2021-22 financial year.</p>
<ul style="list-style-type: none"> <li>Best financial interest duty</li> </ul>	<p><a href="#">Treasury Laws Amendment (Your Future, Your Super) Bill 2021</a> passes both houses and Assented to an Act on 22 June 2021. Amends covenant in section 52B(2)(c) of the SISA.</p> <p>Note that as part of the negotiation for passage on this Bill, two key legislative amendment were also agreed to:</p> <ol style="list-style-type: none"> <li>1. Removal of the <a href="#">excess concessional contribution charge</a> (ECCC)</li> <li>2. Ability to make <a href="#">COVID-19 recontributions</a> into super (and not count towards NCC cap)</li> </ol> <p><b>Effective from 1 July 2021.</b></p>



# Legislative state of play

Item	Status
<ul style="list-style-type: none"> <li>Retirement Income Covenant</li> </ul>	<p>Treasury released <a href="#">a position paper</a> in July 2021 on the proposed retirement income covenant as a pathway to further develop the retirement phase of super – included SMSFs to formulate, regularly review and give effect to a retirement income strategy.</p> <p>Current <a href="#">exposure draft</a> released on 27 September 2021 now <b>excludes</b> SMSFs from the retirement income covenant, which is intended to start from 1 July 2022.</p>
<ul style="list-style-type: none"> <li>Measures announced in Federal Budget 2021-22</li> </ul>	<p>No further information has been provided by the Government in respect to the following super measures within the <a href="#">budget papers</a>:</p> <ul style="list-style-type: none"> <li>Repealing the work test for individuals 67 – 74 year of age making voluntary contributions</li> <li>Reducing the age for downsizer contributions to age 60</li> <li>Increasing the FHSSS amount to \$50,000</li> <li>Removing the \$450 SG threshold</li> <li>SMSF legacy pension conversions</li> <li>Relaxing the SMSF residency rules (removing active member test and increasing the CM&amp;C safe harbour from 2 to 5 years).</li> </ul> <p><b>All measures proposed to apply from 1 July 2022.</b></p>

# Treasury consultations & finalised Bills





Treasury consultations and Bills

# Retirement Income Covenant

# Why has it not proceeded?

1.3 This covenant does not apply to trustees of self managed superannuation funds.

Explanatory Materials  
to Exposure Draft

- Feedback from position paper showed some 'disconnect' existed for SMSFs
- Number of concerns raised with Treasury:
  - Potential overlap between RI covenant and investment strategy covenant on investment composition and risk - may cause confusion or duplication.
  - The role of advice, in particular with a large cohort of unlicensed accountants seen as the primary 'adviser' to the majority of SMSF trustees. With a large amount of reform underway and continuing in 2022, it does pose a challenge for trustees to seek advice to obtain what is necessary and relevant at the appropriate time.
  - Role of SMSF auditors and any extended scope of audit to check compliance with the covenant, which increases the time of complexity of the audit.



# Recognised benefits for SMSFs?

Opportunities through the use of guidance material:

- To help with retirement planning
- Dealing with loss of capacity
- Importance of valid enduring powers of attorney
- Contemplation of 'exit' strategies for members
- Appropriate considerations for winding up the fund

## End of the road?



SMSF Association has continued to stress importance of focus RI strategy benefits. Reality is timeframe for SMSFs too hard to deliver – education, clarity on issues, trustee advice, etc.

Government appear to believe **engaged** SMSF trustees are focused on this anyway?





Treasury consultations and Bills

# Electronic execution measures

# Electronic execution of document measures

- Mid-February 2021, Government announced **further extension** to temporary relief measures for virtual AGMs and signing & sending electronic documents.
- [TLA \(2021 Measures No. 1\) Bill](#) passed both houses and assented to an Act on 13 August 2021.
- Extends the current temporary relief for the execution of documents to 31 March 2022.
- Treasury has now released for consultation an [exposure draft](#) to establish permanent measures to sign and send documents using technology.



# State of play – execution of deeds

	No legislative developments
	Addressed by temporary legislation
	Addressed by permanent legislation
##	Legislation in draft form

	INDIVIDUALS		COMPANIES		
	Deeds (form & execution)	Remote witnessing	Electronic execution (s.127)	Deeds (form & execution)	Remote witnessing
<b>Federal Government <sup>1</sup></b>  <a href="#">Temporary legislation – expires 31/03/2022</a>	N/A	N/A	## Electronic execution & 'split execution' allowed	## Deeds may be in electronic form and signed electronically	## Witnessing of the affixation of a common seal can be done remotely
<b>NSW <sup>2</sup></b>  Temporary legislation – current expiry 01/01/2022	Deeds may be in electronic form and signed electronically <sup>3</sup>	Signing may be witnessed by audio-visual link, with a number of procedural requirements.	N/A	No changes to existing requirements. Deeds signed by individuals as attorneys can be electronic <sup>4</sup>	Signing may be witnessed by audio-visual link, with a number of procedural requirements.

1 - [Treasury Laws Amendment \(2021 Measures No. 1\) Bill 2021](#). Also note that the definition of 'document' applying in the *Corporations Act 2001* (Cth) was expanded by the [Corporations Amendment \(Corporate Insolvency Reforms\) Act 2020](#) (Cth) to cover electronic documents.

2 - Part 2B of the [Electronic Transactions Act 2000](#) (NSW) (the Act), as inserted by section 1.5 of the [Stronger Communities Legislation Amendment \(Courts and Civil\) Act 2020](#) (NSW).

3 - Section 38A of the [Conveyancing Act 1919](#) (NSW).

4 - Section 38A of the [Conveyancing Act 1919](#) (NSW).



	INDIVIDUALS		COMPANIES		
	Deeds (form & execution)	Remote witnessing	Electronic execution (s.127)	Deeds (form & execution)	Remote witnessing
<b>Victoria</b>  Royal Assent 23/03/21	Deeds may be in electronic form and signed electronically <sup>5</sup>	Signing may be witnessed by audio-visual link, with a number of procedural requirements. <sup>6</sup>  <i><b>NB.</b> In Victoria deeds do not need to be witnessed</i>	N/A	Deeds may be in electronic form and signed electronically. <sup>7</sup>	Signing may be witnessed by audio-visual link, with a number of procedural requirements. <sup>8</sup>
<b>Queensland</b> <sup>9</sup>  Amendment regulations effective from 1 July 2021	Deeds may be in electronic form (even without the consent of another signatory or party) and signed electronically.	Deeds may be signed without a witness.  Witnessing can be done by audio-visual link, with significant procedural requirements.	N/A	Deeds may be in electronic form (even without the consent of another signatory or party) and signed electronically.	Deeds and general POAs for corporations may be signed without a witness.  Witnessing can be done by audio-visual link, with significant procedural requirements.

5 – Section 67 of the [Justice Legislation Amendment \(System Enhancements and Other Matters\) Bill 2021](#).

6 – Parts 10 – 13 of the [Justice Legislation Amendment \(System Enhancements and Other Matters\) Bill 2021](#).

7 – Section 67 of the [Justice Legislation Amendment \(System Enhancements and Other Matters\) Bill 2021](#).

8 – Parts 10 – 13 of the [Justice Legislation Amendment \(System Enhancements and Other Matters\) Bill 2021](#).

9 - [Justice Legislation \(COVID-19 Emergency Response—Documents and Oaths\) Amendment Regulation \(No. 2\) 2021](#) from 1 July 2021

	INDIVIDUALS		COMPANIES		
	Deeds (form & execution)	Remote witnessing	Electronic execution (s.127)	Deeds (form & execution)	Remote witnessing
<b>SA</b> <sup>10</sup>	No changes to existing requirements	No changes to existing requirements	N/A	No changes to existing requirements	No changes to existing requirements
<b>WA</b> <sup>11</sup> Temporary legislation – current expiry 31/12/2021	No changes to existing requirements	Where a ‘relevant enactment’ requires or permits signing to be witnessed, can be by audio-visual link, with a number of procedural requirements.	N/A	No changes to existing requirements	Where a ‘relevant enactment’ requires or permits signing to be witnessed, can be by audio-visual link, with a number of procedural requirements.
<b>Tasmania</b> <sup>12</sup> Notice current expiry – 17 June 2021 (unless revoked sooner)	No changes to existing requirements	The signing of affidavits, declarations or other documents pursuant to specified legislative provisions may be witnessed by audio-visual link and served electronically	N/A	No changes to existing requirements	The signing of affidavits, declarations or other documents pursuant to specified legislative provisions may be witnessed by audio-visual link and served electronically

10 - Section 17 of the [COVID-19 Emergency Response Act 2020 \(SA\)](#) and regulation 4 of the [COVID-19 Emergency Response \(Section 17\) Regulations 2020 \(SA\)](#).

11 - Division 4, Part 2 of the [COVID-19 Response and Economic Recovery Omnibus Act 2020 \(WA\)](#) (the Act). Section 25 of the Act states that Division 4 is in addition to, and not in substitution for, the [Electronic Transactions Act 2011 \(WA\)](#) except that regulations 3 and 4 of the [Electronic Transactions Regulations 2012 \(WA\)](#) do not apply in circumstances in which Division 4 applies.

12 - Ministerial notice published in the [Tasmanian Government Gazette dated 17 June 2020](#) pursuant to section 17 of the [COVID-19 Disease Emergency \(Miscellaneous Provisions\) Act 2020 \(Tas\)](#).

# ATO updates





ATO updates

# LCR 2021/2

# LCR 2021/2

- ATO has finalised position with the release of LCR 2021/2 on the application of the NALI provisions in s.295-550 of ITAA 1997, where expenditure is incurred under a non-arm's length arrangement.
- NALI provisions will apply where a scheme operates in which the parties are not dealing at arm's length as it relates to:
  - Acquiring assets at less than market value (ordinary & statutory income)
  - Non-arm's length expenditure (revenue or capital account)
  - Net capital gains (incl. impact of market value substitution rules)



**Tim Miller**, Super Guardian  
**Session:** How to navigate NALI

## Timeline of events to finalise LCR 2021/2



Draft ruling issued in 2018 (before Government finalised changes to s.295-550, ITAA 1997)



Revised draft in 2019 (due to introduction of law changes)



Commissioner release compliance guidance (PCG 2020/5) for arrangements where there is a sufficient nexus of the non-arm's length expenditure (NALE) to all of the fund's income –available from 1 July 2018 to 30 June 2022.



LCR 2021/2 finalised after being referred to public rulings & advice panel for guidance, post industry consultation.

**Not the end of the road?**

## LCR 2021/2

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- NALE nexus remains mostly unchanged – i.e. connection of expenses incurred (and not incurred) with all of the fund's income (e.g. accounting fees, adviser fees)
- Capacity in which the services are performed plays a significant role in determining whether the NALI provisions apply.
- ATO's compliance approach in PCG 2020/5 is available until 30 June 2022
  - Relief doesn't apply to arrangements with specific expenses (e.g. non-arm's length agent fees on property owned by SMSF).





Technical Update

# SuperStream for SMSF rollovers and release authorities

# SMSF rollovers & release authorities

- **From 1 October 2021, the fund will need to use SuperStream to rollover any super money to or from an SMSF**
- SMSFs will also be able to receive and action certain release authorities electronically via SuperStream including:
  - Excess concessional contributions,
  - Excess non-concessional contributions,
  - Excess non-concessional contributions tax,
  - Division 293 due and payable,
  - Division 293 deferred debt and
  - First Home Super Saver release authorities



## SMSF Verification Service (SVS)

The SVS provides APRA Funds and administrators the ability to obtain verified SMSF details prior to processing electronic rollovers and payments to SMSFs via SuperStream transactions.

Existing 'know your client' obligations still apply using current processes and procedures.



## SMSFmemberTICK

Allows the fund and their nominated intermediaries to match member details to information held by the ATO using the member's TFN and other key identity information.



## Example – APRA rollover to SMSF



Example

Kim recently established a new SMSF and want to transfer her existing account with an APRA fund.

Kim wants to request a rollover of her whole balance with the APRA fund into the new SMSF. She can request this transfer using ATO online services or the paper form.

**From 1 October 2021, Kim's SMSF must be able to receive the rollover via SuperStream.** Where the SMSF cannot interact via SuperStream, she cannot roll money into or out of her fund.

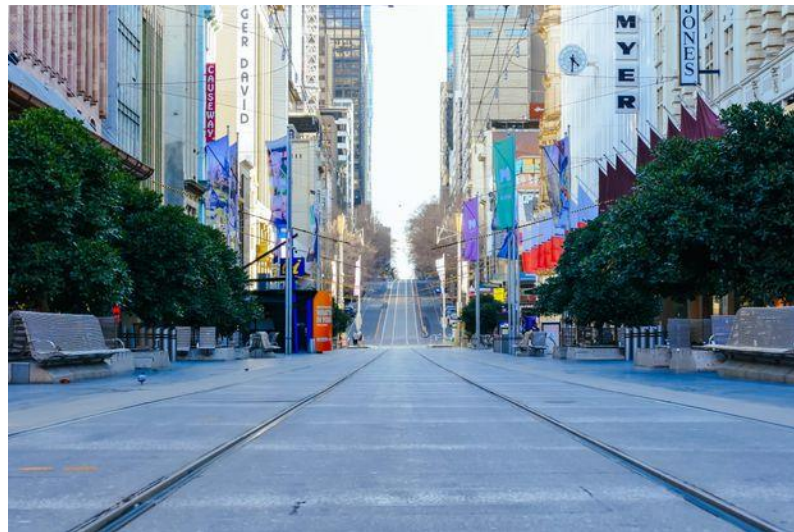


ATO updates

# ATO COVID-19 relief

# ATO COVID-19 relief

- ATO has released details ([QC 66859](#)) confirming the **extension** of its COVID-19 guidance for residency, rental relief, loan repayment relief and in-house asset relief to 30 June 2022.
- Prior ATO relief (FAQs) applied for the 2019-20 and 2020-21 income years only.
  - [SPR 2020/2](#) - SMSFs (COVID-19 Rental income deferrals – In-house Asset Exclusion).
- ABA guidance to support further loan repayment relief (ATO previously indicated satisfies safe harbour for related party LRBAs).
- Updating documentation between landlord and tenant required (and lender where relevant with loan repayment relief).



# ATO FAQs

Summary of the ATO COVID-19 guidance for SMSF trustees:

COVID measure	ATO response
Early access to super	Regulations finished at 31 December 2020
Temporary reduced minimum pension amounts	50% reduced minimum extended for 2021-22; consider treatment of above minimum pension amounts, subject to member's transfer balance cap
Temporary Rent Relief for real property (incl. related parties)	Commissioner issued legislative instrument SPR 2020/2 to provide IHA relief on deferred rental amounts during 2019-20 and 2020-21 financial years.  <b>Similar determination to be made for 2021-22.</b>
Interposed entities rent relief – e.g. non-geared unit trusts (NGUTs)	
Dealing with IHA restrictions	If IHA exceeded at 30 June 2021 – need for written plan by 30 June 2022 > action may not be required.

# ATO FAQs

COVID measures	ATO response
Residency issues - CM&C & active member test	When no other changes in residency conditions, relief will extend with safe harbour beyond 2 years (temporary absence)
Loan repayment relief	Ensure relief is offered on commercial terms and the changes to the loan agreement are properly documented; ATO will not take any compliance action against the fund.
Related Party LRBAs Relief	Utilise ABA guidance for loan relief to demonstrate arm's length dealing for PCG 2016/5 safe harbour
Investment strategies	ATO guidance and expectations published in January 2020; considers 'significant events' on overall strategy for trustees to reflect in documentation ( <b>Investment Strategy Reviews</b> )
Signature requirements for financial statements	ETA Regulations amended in July 2020



ATO updates

# Director IDs

# Modernising Business Registers

- The Government's MBR Program will establish the new [Australian Business Registry Services \(ABRS\)](#) – combining the ABR & 30+ ASIC register, along with the introduction of Director Identification Numbers (DINs)
- Director IDs are a unique identifier that a director will retain forever to help prevent fictitious identities, better tracing of director relationships by Regulators and eliminate unlawful activity (e.g. phoenixing)
- Individual registration required for Director ID – **cannot** use authorised agent or have someone apply on your behalf
- Director ID applications are available from November 2021



## SMSF population

- At 30 June 2020, 62.8% of SMSFs have a corporate trustee
- Equates to approx. 690,000 individuals within SMSF sector needing a director ID
- Other individuals will be required to register for a director ID when acting as legal personal representative (LPR) – e.g. incapacity, overseas absence.

# Modernising Business Registers

## First year of operation for director IDs:

- New company incorporations – directors must have a DIN within 28 days of becoming an eligible officer
  - Consider internal procedures for establishments

## Existing directors transitioning into new regime:

- Existing SMSF trustee companies (incl. bare trustee companies) – transitional period of 12 months applies



## Application for director ID

- Director can only ever have one DIN
- Application to be completed electronically via [ABRS](#) website, requiring:
  1. Setting up MyGovID
  2. Gathering documents to verify identity
  3. Complete Director ID application
- ATO does allow for phone or paper form to setup MyGovID, but significantly slower process.



# Example

## Enduring Power of Attorney

*Harold is a director of ABC Super Pty Ltd, which acts as trustee for the Jones Super Fund.*

*Due to Harold's failing health, his son, James, who has an enduring power of attorney (EPA) is appointed as a replacement director for ABC Super Pty Ltd on 1 December 2021.*

*Unless James already holds a director ID, he is required to obtain a director ID within 28 days of his appointment as a director.*



If an individual anticipates that they will become an eligible officer within the next 12 months, they may apply for a director ID.

# Other updates





ATO updates

# Commercial tenancy relief scheme (Vic) 2021

# Commercial tenancy relief scheme (Vic) 2021

- Victorian Government has finalised Regulations that enable businesses to benefit from rent relief if they have experienced a loss in turnover or more than 30% during the current lockdown.
- Largely replicates the previous regulations in place (i.e. Mandatory Code)
- Eligible tenant is a one-time test – once eligible, they remain eligible for entire scheme period (28 July 2021 to 15 January 2022), with proportional rent adjustments in line with turnover.
- 50% waiver / 50% deferred rent payments
- Any existing deferral to be added to the outstanding deferral of rent relief – repayments frozen until 15 January 2022.



Rent relief (Vic) calculator available



# Commercial tenancy relief scheme (Vic) 2021

## SMSF as landlord:

- Government is providing land tax relief of up to 25%
  - For 'small landlords' (taxable landholdings of <\$3 million) they are eligible to apply for a grant of up to \$6,000 per eligible tenancy (in proportion to land ownership share).
  - If they can demonstrate acute hardship because of rent waivers, they may be eligible for up to \$10,000 per eligible tenancy from the Victorian Government's COVID hardship fund.
  - Hardship fund payment subject to commercial rent percentage of fund's gross income for financial year
  - No evictions without obtaining a direction from the Victorian Small Business Commission (VSBC).
- <https://www.vsbcc.vic.gov.au/your-rights-and-responsibilities/retail-tenants-and-landlords/>
  - <https://business.vic.gov.au/grants-and-programs/commercial-landlord-hardship-fund-3>





# Disclaimer

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# Smart people learn together



## Aaron Dunn

CEO & Co-founder

Smarter SMSF

1300 95 94 76

<https://smartersmsf.com>

[team@smartersmsf.com](mailto:team@smartersmsf.com)



SMSF Association  
Accredited  
Educator

# Thank you!

T 1300 95 94 76

[team@smartersmsf.com](mailto:team@smartersmsf.com)