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Smart people learn together

Changing Face of SMSF
June 2020

Contents

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1. Outstanding Legislation / Measures

The following table outlines a range of measures impacting the SMSF sector and their current status:

Item	Status
• One-off SG Amnesty for employers to correct historical super guarantee non-compliance	Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019 has now received Royal Assent as Act no. 21 on 6 March 2020, with Amnesty period available until 7 September 2020 https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6413 For more information about how the amnesty allows employers to disclose and pay previously unpaid super guarantee charge (SGC), visit the ATO website: https://www.ato.gov.au/Business/Super-for-employers/Superannuation-guarantee-amnesty/
▪ Correcting debit value on commutation of a Market Linked Pension as a CDBIS. ▪ Rollover of super death benefits (15% tax on untaxed element upon rollover)	Treasury Laws Amendment (2019 Measures No. 3) Bill 2019 passed both Houses of Parliament on 17 June 2020. Awaiting Royal Assent to become an Act.
▪ Allowing voluntary contributions (both CCs & NCCs) to be made for people 65 & 66 years without having to meet the 'work test' ▪ Extending ability for spouse contributions up to age 74 ▪ Extends to the bring-forward rule for NCCs where member meets relevant TSB requirements	Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 now registered applies from 1 July 2020. Treasury Laws Amendment (More Flexible Superannuation) Bill 2020 introduced into Parliament on 13 May 2020 – currently before the House of Representatives.
▪ Streamlining the administrative requirements for the calculation of ECPI.	Announced in the 2019-20 Federal Budget (held on 2 April 2019) with measures to start on 1 July 2020; no draft legislation has been issued by Treasury at this time. Senator Jane Hume recently confirmed the Government's commitment to reducing red tape with this legislative change.

▪ Increase of SMSF membership from 4 to 6	Recent presentation by Senator Jane Hume at the SMSF Association National Conference restated the Government's commitment to this policy, https://ministers.treasury.gov.au/ministers/jane-hume-2019/speeches/address-smsf-association-annual-conference-gold-coast
▪ 3-year SMSF Audit cycle	Following closure of the Treasury consultation on 31 August 2018, no draft legislation was issued for this proposal. It appears unlikely that the Government will revisit these measures. The ATO has taken matter off their project work until advised otherwise.

2. COVID-19 measures

The government announced on 22 March 2020 a range of measures as part of the economic response to the coronavirus that have a direct impact on superannuation. This included:

- Temporary early release of superannuation
- Temporarily reducing super minimum drawdown rates
- Reducing social security deeming rates

2.1 Temporary reduced minimum pension

The Government is temporarily reducing the minimum pension drawdown on super income streams for account-based pensions and similar products (e.g. Allocated Pensions, Market Linked Pensions).

The measure will benefit retirees by reducing the need of potentially having to sell investments to fund their minimum drawdown requirements.

The reduction applies for the 2019-20 and 2020-21 income years.

The table below outlines the reduced minimum percentages that will apply:

Age @ 1 July	Standard minimum pension	Reduced minimum pension (50%)
Under 65	4%	2%
65 – 74	5%	2.5%
75 – 79	6%	3%
80 – 84	7%	3.5%
85 – 89	9%	4.5%
90 – 94	11%	5.5%
95 or older	14%	7%

To understand how this works, let's take a look at the following example:

Example 1 – reduced minimum pension calculation

Bill (64) is drawing an account-based pension from his SMSF. The balance of his pension at 1 July 2019 was $600,000, which requires him to take a minimum drawdown of 4% ($24,000) for the 2019-20 income year.

As a result of the reduced minimum pension measures, this minimum pension for 2019-20 has now reduced by 50%, meaning that Bill is only required to draw down $12,000 before 30 June 2020.

Due to the impact of the coronavirus on financial markets, Bill's account-based pension balance had declined to $520,000. As a result, his minimum pension for the 2020-21 financial year is calculated to ordinarily be $26,000 (5% as he is now 65 at 1 July 2020), however a 50% temporary reduction will apply, resulting in a minimum of $13,000 to be withdrawn before 30 June 2021.

The result of this change is that Bill will be able to preserve his capital and not be placed into a forced sale position on fund assets whilst still drawing an income stream from his super fund.

Important points

Below is a list of some important points about how these measures will work, in addition to some key considerations in taking withdrawals for both the 2019-20 and 2020-21 income years:

- If the member has already drawn down an amount equal to or greater than the reduced minimum amount, they are not required to take any further benefit payments before 30 June – i.e. they can stop monthly withdrawals if they want / need.
- Any excess that the member has withdrawn above the reduced minimum cannot be credited back into the member's account – this amount is simply above their (reduced) minimum pension for the year. Any such amount would need to meet the contribution

rules (both eligibility and acceptance) to have such amounts credited back to the member.

- Subject to the pension drawdown requirements of a member for the income year, it may be optimal for amounts above the minimum to be treated as either:
    - amounts from the member's accumulation account where it may exist due to the introduction of the transfer balance cap – this will improve a fund's earning tax exemption for this income year and subsequent years.
    - a partial commutation lump sum, rather than as a pension payment as this would create a debit against their transfer balance account. You will need to consider the timing of TBAR lodgment obligations for the fund, based upon it being a quarterly or annual reporter for these events.

2.2 Temporary early release of superannuation measures

The Government is allowing individuals affected by the Coronavirus to access up to $10,000 of their superannuation in 2019-20 and a further $10,000 in 2020-21 for eligible individuals.

Through an online application via myGov, an individual may be eligible to access:

- up to $10,000 of their super before 1 July 2020; plus
- a further $10,000 from 1 July 2020 – available until 24 September 2020.

Eligibility

For an individual to be able to apply for early release, they must satisfy one or more of the following requirements:

- They are unemployed; or
- They are eligible to receive a job seeker payment, youth allowance for jobseekers, parenting payment (which includes the single and partnered payments), special benefit or farm household allowance; or
- On or after 1 January 2020:
    - You were made redundant; or
    - Your working hours were reduced by 20% or more; or
    - If you are a sole trader – your business was suspended or there was a reduction in your turnover of 20% or more.

Eligible individuals that can access their superannuation will receive these payments tax-free, that they will be treated as non-assessable, non-exempt income (NANE).

Any withdrawals will not affect Centrelink or Veterans' Affairs payments.

How to apply

Applications are completed online through the myGov website, www.my.gov.au, where the individual will need to certify that they meet the above eligibility requirements.

Once the ATO has processed the application, they will issue the individual with a determination, along with providing a copy to the super fund for the release of the super payment from the member's account. The fund will make the payment directly to the individual – not further application needs to be made to the super fund by the member.

How it works for SMSFs

The ATO has provided guidance about how a person can apply for a coronavirus early release payment from their SMSF on compassionate grounds. Ultimately, this process is consistent with that of APRA regulated funds, but for one key difference, which is outlined below in the relevant steps:

1. The individual will need to apply to the ATO from mid-April through their myGov account.
2. The ATO will assess the application and issue a determination of their individual's eligibility to release an amount.
3. When the individual has received the determination, they will issue to the trustee(s) of the SMSF who will then be authorised to make the payment (*Note*: this differs from APRA funds, where the ATO will also notify the super fund to automatically make the payment).

It is the trustee's responsibility to ensure that the member is eligible for an early release payment from their super benefits.

You can refer to the ATO website for further information about the Government's COVID-19 economic response assisting SMSFs and their members.

Examples

Treasury has provided the following examples within their fact sheets to help understand how an individual may qualify for an early release super payment:

> ***Example 1 – Employee impacted by reduced working hours***
> *Ed works in a popular bar in Melbourne. As a result of the Coronavirus, Ed has had his work hours reduced from 40 hours on average in the second half of 2019 to 20 hours per week on average in May 2020. As a result, Ed determines that his hours over the last month have reduced by more than 20 per cent compared to the average of his hours over the last six months of 2019.*
>
> *Ed decides to apply for the early release of $8,000 of his superannuation in May 2020 to help pay his rent and other living expenses. Ed self-certifies that he is eligible for early release on myGov. He could have applied for up to $10,000 but chose not to. Ed cannot seek any further early release of superannuation in 2019-20 on the grounds that he has been affected by the adverse economic effects of the Coronavirus.*
>
> *However, Ed finds after 1 July 2020 that his hours continue to be reduced by more than 20 per cent compared to the average of his hours in the last six months of 2019. Ed decides to make*

a second application and self-certifies through myGov that he is eligible for early release. He can apply again for a release of up to $10,000 of his superannuation. Ed submits a second application for the full amount of $10,000 this time.

For each application, the ATO approves Ed's early release and notifies both him and his superannuation fund. Ed has received a total of $18,000 of his superannuation in two separate payments. He will not be taxed on this amount and is free to spend this money on anything he chooses or save it for future expenses. He is also free to recontribute any unused amounts to his superannuation in the future (within his contribution caps).

Example 2 – sole trader
Rachel is a sole trader with a catering business. At the end of July 2020, Rachel seeks to apply for an early release from her superannuation for the 2020-21 financial year.

Due to the economic effects of the coronavirus, Rachel's turnover for July is $5,000 compared to $10,000 on average per month for the second half of 2019. Rachel therefore determines that her turnover has reduced by more than 20 per cent compared to her average turnover over the last six months of 2019.

Rachel self-certifies that she is eligible for early release and applies to have $10,000 released from her superannuation.

3. ATO COVID-19 FAQ responses

The ATO has swiftly responded to a range of issues identified within the industry where SMSFs have been impacted due to the coronavirus pandemic. This response has been through a list of FAQs available on the ATO website that demonstrate the Regulator's approach to these areas.

Details of each question and ATO response is included below:

3.1 Signature requirements for financial statements

Question: I usually attend my accountant's premises to sign my SMSF's financial statements. However, I am unable to attend in person to sign them this year due to COVID-19. How can I meet the signature requirements?

Answer: There are options available. Under the super laws, SMSF trustees are required to sign their SMSF's financial statements before finalising their fund's audit each income year. COVID-19 impacts such as social distancing or isolation requirements or your tax agent or accountant working from a home office may prevent you from signing your SMSF's financial statements in person this year.

Alternative options available for signing the financial statements consist of returning a signed scanned copy to your tax agent or accountant by email or using an electronic signature such as a digital signature. Digital signatures should be provided:

- using a secure system, typically through an established third-party provider
- in a way that clearly identifies the trustee signing and indicates the approval you are providing.

A secure system would include a system that requires a personal identification number, access code or password to use.

If you can't use these alternative options to sign your financial statements, your agent or accountant should post the financial statements to you and you will need to sign them and arrange to return them to your agent by post.

You will not meet the signature requirement if you only acknowledge the financial statements by email or over the phone.

This question was last updated on 23 April 2020.

3.2 Early access to super

Question: One of the members of my SMSF wants to apply for release of their super under the COVID-19 early access arrangements, what do I do?

Answer: Your member can apply for release of their super under the COVID-19 early access arrangements through myGov. We will then issue them with a determination advising of their eligibility to withdraw an amount. When you receive the determination from your member, you will be authorised to release the amount of super stated in the determination. If the current balance of the member’s account is less than the amount approved in the determination, you can release the lesser amount.

The amount is not subject to PAYG withholding and does not need to be reported on a PAYG payment summary.

Question: If my SMSF member does not meet the COVID-19 early access arrangements, is there any other way they can access their super?

Answer: Subject to the terms of your trust deed, your member can access their super when they:

- each their preservation age and retire
- reach their preservation age and choose to begin a transition to retirement income stream while they are still working

- are 65 years old (even if they have not retired).

They can also access super in some special circumstances, including:
- compassionate grounds – subject to certain limitations
- severe financial hardship – subject to certain limitations
- terminal medical condition
- temporary incapacity – subject to certain limitations
- permanent incapacity
- super less than $200 – subject to certain limitations.

This question was last updated on 17 April 2020.

3.3 Related party limited recourse borrowing arrangement relief

Question: My SMSF has a compliant limited recourse borrowing arrangement (LRBA) in place with a related party. Would the non-arm's length income (NALI) provisions apply if the related party offers repayment relief to the SMSF trustees because of COVID-19?

Answer: We understand that temporary repayment relief may be offered in relation to an existing LRBA between an SMSF and a related party due to the financial effects of COVID-19.

If the repayment relief reflects similar terms to what commercial banks are currently offering for real estate investment loans as a result of COVID-19, we will accept the parties are dealing at arm's length and the NALI provisions do not apply. For example, these terms currently include temporary repayment deferrals for most businesses of up to 6 months, with unpaid interest being capitalised on the loan.

The parties to the arrangement must also document the change in terms to the loan agreement and the reasons why those terms have changed. It is also expected that there is evidence that interest continues to accrue on the loan and that the SMSF trustee will catch up any outstanding principal and interest repayments as soon as possible.

Any further repayment relief needed due to the continued effects of COVID-19 should be reviewed at the end of the agreed deferral period and remain in line with what the commercial banks are offering at that time.

See also:
- You can refer to the Australian Banking Association's websiteExternal Link for current information on COVID-19 bank relief

This question was last updated on 17 April 2020.

3.4 Temporarily reducing superannuation minimum payment amounts

Question 1: I am retired and receive an account-based pension from my SMSF. My account-based pension balance has been badly affected by the losses in the financial market because of the COVID-19 crisis. I would like to reduce my pension payments. Does the SMSF still need to pay me the minimum amount that was calculated based on my account balance at 1 July 2019?

Answer: No. You can reduce the minimum amount your SMSF pays you by up to 50% of what is otherwise required based on your account balance at 1 July 2019 for the 2019–20 financial year. Certain superannuation pensions and annuities are subject to rules about minimum and maximum amounts paid in a financial year. To assist retirees, the government has reduced the minimum annual payment required for account-based pensions and annuities, allocated pensions and annuities and market-linked pensions and annuities by 50% in the 2019–20 and the 2020–21 financial years

Question 2: I am retired and receive an account-based pension from my SMSF. My account-based pension has already paid me more than the reduced minimum annual payment required for the 2019–20 financial year. Is my SMSF required to continue making pension payments to me for the remainder of the year?

Answer: If a member does not want to receive any further pension payments, they can cease being paid the pension for the remainder of the year. This must be communicated to the Trustee. It is important that the SMSF trustee considers its trust deed and documents any changes and the reason for the change. This could be recorded in a minute or other contemporaneous document.

Question 3: I am retired and receive an account-based pension from my SMSF. My account-based pension has already paid me more than the reduced minimum annual payment required for the 2019–20 financial year. Is the amount over the minimum considered superannuation lump sum amounts?

Answer: Pension payments that you have already received cannot be re-categorised. Accordingly, payments made from your account-based pension in excess of the new reduced minimum annual payment required for the 2019–20 financial year are pension payments (that is, superannuation income stream benefits) for the year and not superannuation lump sums.

Question 4: I am retired and receive an account-based pension from my SMSF. Does my SMSF trustee need to document a reduction in my pension payments if it occurs in accordance with the reduced minimum annual payment for the 2019–20 and 2020–21 financial years?

Answer: Yes, it's important your SMSF trustee documents the change and the reason for the change. This could be recorded in a minute or other contemporaneous document.

Question 5: I am retired and receive an account-based pension from my SMSF and an APRA-regulated industry fund. Can I still use the reduced minimum annual payment if I get a pension from another fund?
Answer: If you are receiving multiple pensions from your SMSF or from other super funds, the reduced minimum annual payment can be used to calculate the minimum pension required to be paid for each eligible pension you receive.

Question 6: Does the reduced minimum annual payment for account-based pensions and annuities, allocated pensions and annuities required for the 2019–20 and 2020–21 financial years also apply to market linked pensions?

Answer: Yes, the reduction in the superannuation minimum annual payment requirements applies to market linked pensions (also referred to as term allocated pensions or TAPs).

Market linked pensions have a minimum and maximum payment limit, and the actual pension payment drawn for the year must be within these limits. The minimum payment limit, which is normally 90% of the pension amount that is worked out under a formula, has been reduced to 45% for the 2019–20 and 2020–21 financial years as part of the government's temporary reduction of superannuation minimum payment amounts.

Question 7: My SMSF now has a considerable unrealised capital loss as a result of the recent downturn in the global economy. Can I re-assess my member's super benefits that support the pension to work out the reduced minimum annual payment amount?

Answer: The changes only provide for a halving of the minimum annual payment requirement as applicable to the pension account balance at:

- 1 July 2019 (or a later commencement date during the year) for the 2019–20 year
- 1 July 2020 (or a later commencement date during the year) for the 2020–21 year.

Regardless of losses incurred, you cannot recalculate the pension based on a lower account balance of the fund at another point in time.

Question 8: I am a trustee of an SMSF. I have paid more than the reduced minimum annual payment amount for 2019–20 financial year to a member of my SMSF. Can the member put the amount above the reduced minimum annual payment back into the SMSF?

Answer: Your member can put the amount back into the SMSF as a superannuation contribution if they are eligible to make superannuation contributions, subject to any other rules or limits such as contributions caps.

3.5 Providing rent relief

Question: My SMSF owns real property and wants to give my tenant – who is a related party – a reduction in rent because of the financial effects of COVID-19. Charging a related party a price that is less than market value is usually a contravention. Given the effects of COVID-19, will the ATO take action if I do this?

Answer: Some landlords are giving their tenants rent relief as a rent reduction, waiver or deferral because of the financial effects of COVID-19 and we understand that you may wish to do so as well. Our compliance approach for the 2019–20 and 2020–21 financial years is that we will not take action if an SMSF gives a tenant – even one who is also a related party – a temporary rent reduction, waiver or deferral because of the financial effects of COVID-19 during this period.

If your SMSF holds an interest in an interposed entity such as a non-geared company or unit trust and that interposed entity leases property to a tenant, we will not treat the investment in the interposed entity as an in-house asset for the current and future financial years as a result of a deferral of rent being provided to the tenant due to the financial effects of COVID-19.

If there are temporary changes to the terms of the lease agreement in response to COVID-19, it is important that the parties to the agreement document the changes and the reasons for the change. You can do this with a minute or a renewed lease agreement or other contemporaneous document.

This question was last updated on 23 April 2020.

3.6 Super balance losses

Question: My super balance has been affected by downturns in the global economy so my SMSF needs to sell an asset of the fund at a loss. Can my SMSF claim this loss against the income it earned this year or can I claim it in my personal tax return?

Answer: Unrealised losses due to changes in the market value of investments are not deductible in calculating your SMSF's net taxable income for the year. However, a realised capital loss incurred by your SMSF from the sale of one of its CGT assets can be offset against realised capital gains from other CGT assets in the current year. If your SMSF's capital losses exceeds its capital gains for the income year, this net capital loss cannot be deducted from your SMSF's income but it can be carried forward and applied against future capital gains.

Losses incurred by your SMSF are not available to you to deduct in your own personal tax return.

This question was last updated on 17 April 2020.

3.7 SMSF residency

Question: After temporarily residing overseas for less than two years, we were about to return to Australia but became stranded overseas because of the COVID-19 health crisis. This forced absence means we will be out of Australia for more than two years. What will this mean for our SMSF?

Answer: An SMSF must be an Australian super fund to be a complying fund and receive concessional tax treatment.

To be an Australian super fund an SMSF must meet three residency conditions, see Check your fund is an Australian super fund. The second and third conditions are relevant in this case.

The COVID-19 health crisis has resulted in many countries imposing travel bans and restrictions and a high degree of uncertainty generally around international travel.

If the individual trustees of an SMSF or directors of its corporate trustee are stranded overseas due to COVID-19, in the absence of any other changes in the SMSF or the trustees' circumstances affecting the other conditions, we will not apply compliance resources to determine whether the SMSF meets the relevant residency conditions.

3.8 In-house asset restrictions

Question: The downturn in the share market may result in the fund's in-house assets being more than 5% of the fund's total assets. The in-house asset rules would be breached. What do I need to do?

(Updated) Answer: If, at the end of a financial year, the level of in-house assets of a SMSF exceeds 5% of a fund's total assets, the trustees must prepare a written plan to reduce the market ratio of in-house assets to 5% or below. This plan must be prepared before the end of the next following year of income. If an SMSF exceeds the 5% in-house asset threshold as at 30 June 2020, a plan must be prepared and implemented on or before 30 June 2021. However, we will not undertake compliance activity if the rectification plan was unable to be executed because the market has not recovered or it was unnecessary to implement the plan as the market had recovered.

This compliance approach also applies where the SMSF exceeded the 5% in-house asset threshold as at 30 June 2019 but has been unable to rectify the breach by 30 June 2020.

This question was last updated on 8 May 2020.

3.9 Investment strategies

Question: The downturn in the market has affected my SMSF's investment strategy. What do I need to do?

Answer: Trustees must prepare and implement an investment strategy for their SMSF, which they must then give effect to and review regularly. The strategy should be reviewed at least annually, and you should document that you have undertaken this review and any decisions arising from the review. Certain significant events, such as a market correction, should also prompt a review of your strategy and may require updating your investment strategy.

If the assets of an SMSF or the level of investment in those assets fall outside of the scope of your investment strategy, you should take action to address that situation, which could involve adjustments to investments or updating your investment strategy. We do not consider that short term variations to your articulated investment approach, including to specified asset allocations whilst you adjust your investments, constitute a variation from your investment strategy.

All investment decisions must be made in accordance with the investment strategy of the fund. If in doubt, trustees should seek investment advice.

This question was last updated on 20 March 2020.

Smarter SMSF has also written a significant number of blog posts the above and related matters due to the impacts of COVID-19. You can find out more about these and other COVID-19 items on the Smarter SMSF website - https://smartersmsf.com/covid-19/

4. Other ATO Updates

4.1 PCG 2020/5 - Applying the non-arm's length income provisions to 'non arm's length expenditure'

The publication of draft Law Companion Ruling, LCR 2019/D3 Non-arm's length income – expenditure incurred under a non-arm's length arrangement was certainly the most controversial topic impacting the SMSF sector over the past 12 months, with this legislative interpretation bringing into focus a range of circumstances that aim to clarify the distinction between personal and trustee services, but take appear to take a sledgehammer to crack an egg (that is, disproportionate outcomes on NALI arise as a direct result of a minor discount on a loss, outgoing or expense).

To accommodate many practitioners impacted by these measures, the ATO simultaneously released practical compliance guidance, allowing for a transitional period to comply with LCR 2019/D3. **This guidance has now been updated in the form of** ***PCG 2020/5 - Applying the non-arm's length income provisions to 'non arm's length expenditure' - ATO compliance approach*** *for complying superannuation entities*. **The guidance extends this current relief for a further financial year, now encompassing 2018-19, 2019-20 and 2020-21.**

Whilst clarification on the non-arm's length expenditure (NALE) requirements as soon as possible would be beneficial to the industry, in this current environment it is not unreasonable for the ATO to require additional time to finalise their position due to the impacts of COVID-19.

The ATO are current considering a range of items as outlined within the compendium to PCG 2020/5:

Being considered	Out of scope
Whether a de minimis rule could be adopted regarding materiality or a safe harbour rule?	What documentation is needed to substantiate expenditure incurred by a trustee of a complying super fund
How guidance can be provided on how trustees can avoid breaches of the trustee remuneration provisions within the SISA 1993 (s.17A)	Accommodation of more non-arm's length borrowing situations – e.g. annual interest payments, rather than monthly interest payments

It is important to also note that ATO has re-affirmed that transitional compliance approach does not apply where the fund incurred NALE that directly relates to the fund deriving ordinary or statutory income.

For further details about these rules, you can refer to our previous blog post,
Beware of how gnarly expenditure is within the new NALI rules.

Reference:
https://www.ato.gov.au/law/view/document?DocID=COG/PCG20205/NAT/ATO/00001&PiT=99991231235958

4.2 PCG 2020/6 - Timing of income tax deductions for super contributions made through the SBSCH - ATO compliance approach

If any of your clients use the Small Business Superannuation Clearing House (SBSCH), it is important to remind them that for 2019–20, super payments need to be accepted by the SBSCH by 23 June 2020 to allow time for the employees' super funds to receive the payments by 30 June. It is important to meet this timeframe as the timing of the payments may impact the individual tax position of employees.

For the purpose of claiming a tax deduction, superannuation payments are only considered to be paid once they have been processed and received by the employees' super funds, not the date the SBSCH accepts the payments.

However, in late 2019 a draft Practical Compliance Guide (PCG) was issued for consultation, which has now been finalised and published as PCG 2020/6.

With the finalisation of PCG 2020/6, where the conditions in the Guideline are satisfied, the Commissioner will not apply compliance resources to determine which income year employers are entitled to claim income tax deductions for super contributions made through the SBSCH provided your client makes the payment to the SBSCH before close of business on the last business day on or before 30 June.

Before your clients make super payments, they should confirm with their employees that their super fund details are correct in their SBSCH account and make necessary updates as soon as possible.

Further details of the conditions are available within the PCG 2020/6 in regard to providing all relevant information to allow the SBSCH to process the payments. Incorrect details may have an impact on the applicability of the PCG to an employers' circumstances.

The due date for quarterly super guarantee (SG) payments has not changed. The next quarterly due date is 28 July 2020.

4.3 LRBA related party interest rate 2020-21

Where a fund has entered into a limited recourse borrowing arrangement (LRBA) with a related party that is utilising the safe harbour set out in PCG 2016/5, the interest rate is required to stay in line with the published rate each year by the Australian Taxation Office (ATO).

The rate utilised by the ATO is the Reserve Bank of Australia (RBA) Indicator Lending Rates for banks providing standard variable housing loans for investors (refer to table F5) – this rate is determined for the following financial year (from 1 July) based upon the published rate in May each year.

This rate has now been published by the RBA at 5.1%, reduced from the previous year at 5.94% as you can see within the table below:

Year	**Real property**	**Listed shares or units**
2020-21	5.10%	7.10%
2018–19	5.94%	7.94%

Loan repayment relief
There are currently a range of SMSFs impacted by COVID-19, with rent relief being offered to tenants due to the Government's economic response to the pandemic.

The impact of rental relief being provided has then naturally put pressure on a fund's ability to meet loan repayments where an LRBA is in place. For related party loan arrangements, the ATO has provided temporary LRBA relief to where the repayments that are deferred are consistent with those set out on the Australian Banking Association's website (as provided by commercial lenders).

What does this change in interest rate mean?
It is important that the capitalised interest during this period is appropriately reduced from 1 July in line with the interest rate adjustment. It will mean that the fund will have to recalculate its repayments after this 6-month period, accounting for the change in interest rates.

4.4 Streamlined support for SMSFs issued with a commutation authority

As part of the ATO's COVID-19 related support they are implementing a temporary email service for SMSF trustees and their agents to help where a commutation authority has been issued.

Some common errors that may lead to a commutation authority being issued include:

- duplicate reporting because the person has:
    - not properly identified or recorded that an event has been reported to us before
    - changed reporting platforms or administration systems and re-reported events due to a change in pension account numbers
    - not checked which events the trustees or previous agent have already reported to us for a new client
- not reporting the commutations that occur when a member rolls over their pension interest to another fund.

Trustees/Agents can use the temporary email service to:

- understand why the ATO has sent the fund a commutation authority and what needs to be done in response
- identify and rectify any reporting issues which may have led the ATO to issue the commutation authority in the first instance.

This service can also be used if a member of the SMSF has been approached by their APRA fund because the ATO has issued their APRA fund with a commutation authority, and there are concerns that there may be issues associated with the SMSFs TBAR reporting.

SMSF trustees and their agents can email the early engagement and voluntary disclosure mailbox any time between now and 31 August 2020 - SMSFRegulatoryContraventionVoluntaryDisclosure@ato.gov.au

When using this service, you should provide as much information as possible, including:

- the fund that received the commutation authority
- the ABN of the SMSF involved (who has either received the commutation authority or reported information to the ATO that led them to issuing the commutation authority to another fund)
- when the commutation authority is due and, if available, the reference number on the commutation authority
- the member the commutation authority relates to
- any questions you have about the commutation authority.

Note: This service does not replace the fund's obligation to comply with, and respond to, a commutation authority within 60 days and is only to provide information to assist in meeting these obligations.

This service is not available to assist individuals who have exceeded their transfer balance cap and have been sent an excess transfer balance determination.

Reference:
https://www.ato.gov.au/Super/Sup/Streamlined-support-for-SMSFs-issued-a-commutation-authority/

5. Mandatory Code of Conduct for commercial tenancies

The Federal Government announced a Code of Conduct ("the Code") to impose a set of good faith leasing principles to apply to commercial tenancies only (e.g retail, office and industrial properties) impacted by COVID-19.

Which tenancies are affected?

The Code will apply where the commercial tenant:

- is an eligible business for the purpose of the newly legislated JobKeeper program; and
- has an annual turnover of $50 million or less (referred to as 'SME Tenants')

All other tenancies are not affected by the mandatory Code.

It is possible for Tenants who do not meet the requirements of the Jobkeeper program to be able to access the Code if they can show sufficient "financial stress or hardship". That is, that their business is unable to generate sufficient revenue as a direct result of the pandemic that causes the Tenant to be unable to meet its financial and/or contractual commitments.

Duration of the Code

The Code envisages that it will be operational during the pandemic period, which is defined to be the period during which the JobKeeper program is operational. Based on previous national cabinet announcements, this is expected to be a period of six months.

Details of the Code

In negotiating and enacting appropriate temporary arrangements under the Code, the following 14 lease principles should be applied as soon as practicable on a case-by-case basis:

1. Landlords must not terminate leases due to non-payment of rent during the COVID-19 pandemic period (or reasonable subsequent recovery period).
2. Tenants must remain committed to the terms of their lease, subject to any amendments to their rental agreement negotiated under the Code. Material failure to abide by substantive terms of their lease will forfeit any protections provided to the Tenant under this Code.
3. Landlords must offer Tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount ordinarily payable, on a case-by-case basis, based on the reduction in the Tenant's trade during the COVID-19 pandemic period and a subsequent reasonable recovery period.
4. Rental waivers must constitute no less than 50% of the total reduction in rent payable under principle #3 (above) over the COVID-19 pandemic period and should constitute a greater proportion of the total reduction in rent payable in cases where failure to do so would compromise the Tenant's capacity to fulfil their ongoing obligations under the lease agreement. Regard must also be had to the Landlord's financial ability to provide such additional waivers. Tenants may waive the requirement for a 50% minimum waiver by agreement.
5. Payment of rental deferrals by the Tenant must be amortised over the balance of the lease term and for a period of no less than 24 months, whichever is the greater, unless otherwise agreed by the parties.
6. Any reduction in statutory charges (e.g. land tax, council rates) or insurance will be passed on to the Tenant in the appropriate proportion applicable under the terms of the lease.
7. A Landlord should seek to share any benefit it receives due to deferral of loan payments, provided by a financial institution as part of the Australian Bankers Association's COVID-19 response, or any other case-by-case deferral of loan repayments offered to other Landlords, with the Tenant in a proportionate manner.
8. Landlords should where appropriate seek to waive recovery of any other expense (or outgoing payable) by a Tenant, under lease terms, during the period the Tenant is not able to trade. Landlords reserve the right to reduce services as required in such circumstances.
9. If negotiated arrangements under this Code necessitate repayment, this should occur over an extended period in order to avoid placing an undue financial burden on the Tenant. No repayment should commence until the earlier of the COVID-19 pandemic

ending (as defined by the Australian Government) or the existing lease expiring, and taking into account a reasonable subsequent recovery period.

10. No fees, interest or other charges should be applied with respect to rent waived in principles #3 and #4 above and no fees, charges nor punitive interest may be charged on deferrals in principles #3, #4 and #5 above.
11. Landlords must not draw on a Tenant's security for the non-payment of rent (be this a cash bond, bank guarantee or personal guarantee) during the period of the COVID-19 pandemic and/or a reasonable subsequent recovery period.
12. The Tenant should be provided with an opportunity to extend its lease for an equivalent period of the rent waiver and/or deferral period outlined in item #2 above. This is intended to provide the Tenant additional time to trade, on existing lease terms, during the recovery period after the COVID-19 pandemic concludes.
13. Landlords agree to a freeze on rent increases (except for retail leases based on turnover rent) for the duration of the COVID-19 pandemic and a reasonable subsequent recovery period, notwithstanding any arrangements between the Landlord and the Tenant.
14. Landlords may not apply any prohibition or levy any penalties if Tenants reduce opening hours or cease to trade due to the COVID-19 pandemic.

Compulsory Mediation to apply where there's no agreement

Where Landlords and Tenants cannot reach agreement on leasing arrangements (as a direct result of the COVID-19 pandemic), the matter should be referred and subjected (by either party) to the Victorian Small Business Commissioner. Landlords and Tenants must not use mediation processes to prolong or frustrate the facilitation of amicable resolution outcomes.

To understand how this will apply, let's take a look at the following example how the Code will operate:

Example
ABC Architects operate out of commercial premises in Melbourne. They have a turnover of $1.2 million. As a result of the pandemic they have lost 50% of their trade and they are therefore eligible for the JobKeeper program.

They have 36 months left under their existing lease. The lease rent is scheduled to increase by 3% on the 1st July of each year. It is assumed that the JobKeeper program will operate for (6) six months ("Pandemic period"). It is also assumed that the associated recovery period will be (3) three months.

As tenant, the Code will operate as follows:

- *the monthly rental payments will be reduced by 50% for the next 9 months (based upon 50% loss of trade)*

- *of the 50% reduction in rent, half will be in the form of a rental waiver and will not be recoverable by the Landlord, the remaining half will be in the form of a rental deferral.*
- *ABC Architects as tenant must continue to pay the remaining 50% of the rent due during the 9 month period. Any breach will mean that the Tenant will not have the benefit of the Code.*
- *After the 9 month period, the rent will return to its normal level and the rent deferred will be divided equally over the remaining 27 months of the lease and added to the Tenants ordinary rent payable.*
- *As the tenant is still trading, outgoings under the lease will be payable, but reduced in proportion to any relief offered to the Landlord.*
- *The Landlord offers the tenant a 9 month extension of the current lease term, which the tenant accepts.*
- *The fixed increase in rental that was to occur on 1 July 2020 will be delayed by 9 months until 1 April 2021.*

It is important for Landlords and Tenants affected by the Code to ensure that any arrangements that are to be put in place are properly documented as a Variation to their lease, to ensure that the negotiations between the parties are binding and do not impact on other obligations under the lease.

6. Execution of company documents

As part of the Federal Government's continued response around matters impacted by COVID-19, we have seen the Federal Treasurer, Josh Frydenberg make a temporary amendment for six months to the requirements set out in section 127(1) of the Corporations Act to provide clarity that the execution of company documents can be in electronic form and signed electronically by company officers.

Effective from 6 May 2020, The *Corporations (Coronavirus Economic Response) Determination (No. 1)* 2020 ("Determination") modified section 127(1) so that a company may execute a document without a common seal if 2 directors, a director and company secretary or the sole director/secretary of a proprietary company by signing a counterpart of the document in physical form or using an electronic communication which reliably identifies the person and indicated their intention to execute the document on behalf of the company.

The Determination outlines that the copy, counterpart or electronic communication must include the entire contents of the document but does not need to include the signature of another person signing the document.

With the definition of 'document' in section 127 of the Corporations Act being extended to include a document in electronic form, s.129(5) is modified to ensure that a reference to a document being signed in accordance with s.127(1) includes a document executed in accordance with s.127(1) as modified by the Determination. For sole director/secretary companies, a person may also assume that the document has been duly executed by the company for the purposes of s.129(5) where signed by electronic means consistent with the Determination.

Therefore, this determination means that anything done in accordance with the modified operation on s.127 is as valid and effective for all purposes as if it had done before such modification had been made.

How can documents be signed?

As a result of the modified operation of s.127, the Determination makes it clear that the following methods of execution under s.127 are now (temporarily) allowed:

1. signatories can physically sign (wet ink) different copies of the document (split execution);
2. signatory #1 can print, sign (wet ink) and scan the document, and then send that document to signatory #2 who does the same (modified split execution); or
3. signatories can apply their e-signature to electronic versions of the document (electronic execution). The explanatory note to the Determination states that there are a number of ways by which officers might sign a document electronically, such as:
    - pasting a signature into a document
    - signing a PDF on a tablet, smartphone or laptop using a stylus or finger; or
    - using a cloud-based signature platform such as Docusign or Adobe Sign.

Does this relate to SMSF Deeds?

The use of electronic signatures with deeds more generally has been a point of debate for some time. Section 127(3) provides that:

> *A company may execute a document as a deed if the document is expressed to be a deed and is executed in accordance with subsection (1) or (2).*

It is widely acknowledged that at common law, a deed must be on paper, vellum or parchment – the concept that a deed must be signed in 'wet ink'. Before the Determination, it was unclear whether s.127(3) displaced this common law rule.

Interestingly, the Determination does not expressly state that Deeds may be in electronic form and can be signed electronically. However, the explanatory note does state that the Determination modifies s.127 for companies, directors of companies, company secretaries and any persons that have dealings with companies to allow for the use of an electronic signature to meet the requirements for a signature, and further states that

> "*the entire process of executing a document can be carried out using electronic communications*"

It appears that the intention of the Determination is to facilitate electronic documents and electronic signing, which would seem to satisfy that a deed in electronic form and signed electronically by a company satisfies the requirements of s.127.

For SMSFs, this would allow for the temporary electronic signing of establishing deeds, deeds of variation, bare trusts for LRBAs, changes of trustee, lost deeds, etc. However, it would also be prudent to seek further legal advice within the relevant jurisdiction before determining to execute a deed electronically.

Does this extend to individual trustees?

No, deeds signed by individuals to whom s.127 does not apply will still be subject to the paper requirement unless it is modified by statute. The table is a summary (current as at June 2020) of each state or territory whether rules changes allow for the electronic signing of deeds where a corporate trustee is not is place:

State	Legislation	Time frame	Deeds
NSW	The Electronics Transactions Amendment (COVID-19 Witnessing of Documents) Regulation 2020	6 months	Yes
VIC	COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020	6 months	Yes
QLD	COVID-19 Emergency Response—Wills and Enduring Documents) Regulation 2020	31/12/2020	Yes
SA	COVID-19 Emergency Response (Section 17) Regulations 2020	N/A	No, requires 'wet ink'
TAS	COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020	N/A	No notice that it applies
WA	No measures put in place		No, but may be enforceable as a contract in certain circumstances
ACT	No measures put in place		
NT	No measures put in place		

Ordinarily, a deed signed by an individual must be witnessed and attested in all jurisdictions except Victoria and the witness must be present when the individual signs – this applies in all jurisdictions, with the exception of any temporary relief put in place.

Changes are temporary

It should be remembered that the changes are only in effective for a period of 6 months from 6 May 2020 (i.e. to 5 November 2020). The relief is only intended to provide short-term regulatory change to facilitate the continuation of business in light of COVID-19.

It does however provide some level of certainty around the uncertainties with s.127 with a view that it may provide a path for a more clear and permanent change in the future.

7. Case law – Marsella vs. Wareham

The case of *Marsella -v- Wareham* (*Marsella*) was handed down by the Full Court of the Supreme Court of Victoria on 20 April last. The decision is a salient reminder to advisers and clients of not only the consequences when a binding death benefit nomination becomes non-binding, but what steps a trustee in this position has to take when it exercises a discretion to pay a deceased member's death benefits.

There are a number of circumstances when a Binding death benefit nomination can become non-binding or where a trustee is left with a discretion to pay superannuation benefits on the death of a member with the legal pitfalls that await them, as *Marsella* indicates:

1. Paying a death benefit to a non SIS dependant (1);
2. The form of nomination does not comply with the rules of the Fund (2)
3. Problems or errors with trust deed upgrades or change of trustee (3)
4. A nomination that is not stepped or cascading and the nominated beneficiary predeceases the Member;
5. A binding nomination that has lapsed;
6. The payment of an excess transfer balance from a reversionary pension where there is no binding death benefit nomination regulating that excess.

The facts in Marsella in review

Helen Swanson established an SMSF in 2003 in which she was the sole Member. She died in April 2016 and at the time of her death, she and her daughter Mrs Wareham were the trustees of the Fund. At the time of her death Mrs Swanson was survived by her second husband, Rick Marsella, Mrs Wareham and her son Charles Swanson. In her Will, she appointed Mr Marsella as Executor and granted a life interest in a property in Mornington for Mr Marsella until his death, with the balance of her estate passing to her surviving daughter and son. The value of Mrs Swanson's death benefits were approximately $450,000.

In 2003 Mrs Swanson made a lapsing binding death benefit nomination, nominating her grandchildren as beneficiaries. At the time of her death, that death benefit nomination had not been renewed.

In October 2016 Mr Marsella commenced proceedings seeking further provision from Mrs Swanson's estate (Part IV claim). At that point in time, the death benefits had not been paid out. However, in April 2017, the Fund's accountant advised Mrs Wareham that the Fund would lose its complying status and potentially incur tax penalties unless the death benefits were paid out as soon as possible. He advised Mrs Wareham that she needed to consider the interests of all of her mother's dependants and that she should obtain specialist advice. Mrs Wareham advised her accountant that she would consider all of her mother's dependants as defined by the trust deed and her mother's wishes, as stated in the May 2003 binding death benefit nomination form.

The solicitors for Mrs Wareham prepared the trustee minutes for the payment of the death benefits that were dated 17 April 2017. In fact, two sets of minutes were prepared, one involving the appointment of Mrs Wareham's husband as Co-trustee. This was done because of the requirements of the trust deed which required the office of trustee to be held by two or more trustees. Both minutes resolved to pay Mrs Swanson's death benefits to Mrs Wareham.

The Supreme Court of Victoria decided that it would deal with Mr Marsella's Part IV claim first. In its judgement the Court granted Mr Marsella a "flexible life interest" in another larger property owned by the deceased in Frankston, together with a pecuniary legacy of $100,000.

In a separate proceeding relating to the super benefits, Mr Marsella sought orders that Mrs Wareham be removed as trustee of the Fund and challenged the payment of the death benefits.

The first decision of the Court

What the Court decided, was that while Mrs Wareham fell within the class of objects or beneficiaries of the super Fund, the power of distribution under the Fund's deed was a "special power" and did not negate her duty to exercise that power "in good faith upon real and genuine consideration and for the purposes for which it was conferred", referring to an earlier 1984 case of *Karger-v- Paul.*

Under the principles of *Karger-v- Paul*, a court is not obliged to investigate the fairness or reasonableness of the outcome of the exercise of a trustee discretion, particularly in circumstances where a trustee does not give reasons for its decision and is not bound or obliged to give such reasons. In the Marsella case, Mrs Wareham chose not to give reasons for the exercise of her discretion to pay the death benefits to herself, relying on the principles of *Karger-v- Paul.*

What the trial judge decided was that the distribution of the entire amount of the death benefits held in the Fund to Mrs Wareham supported the conclusion that there was a lack of real and genuine consideration. In coming to this decision, the Court drew upon various inferences from the limited amount of evidence that was produced. The Court decided that the outcome itself, which was held to be "grotesquely unreasonable", constituted evidence that the discretion was not exercised "upon real and genuine consideration" or that it was exercised in bad faith. The judge said that the trustee had ignored Mr Marsella's substantial relationship with Mrs Swanson and relatively limited financial circumstances, that the trustee resolutions were "formulaic" and that the trustee had not obtained specialist advice. The Court also drew reference to a particular letter from the trustee's solicitors to Mr Marsella's solicitors which contended that he was not a beneficiary of the Fund. From this letter alone, the Court said that there was a misapprehension on the part of the trustee to identify Mr Marsella as a potential beneficiary and that she had made her decision with "ill-informed arbitrariness" in her duties as trustee which amounted to bad faith. The Court did, however, agree that the purpose for the exercise of the discretion was not improper.

The Court also referenced from the Part IV proceeding that the parties were in conflict, referring to an alleged altercation at the home of Mr Marsella following Mrs Swanson's death.

What was challenged on appeal

What was argued on appeal was that the trial judge was in error. There were 10 grounds of appeal lodged. It was argued that there was <u>no evidence</u> that the trustee had failed to give real and genuine consideration to the exercise of her discretion. That at its highest, all that could be inferred, based on one item of correspondence, was that the trustee had acted on incorrect legal advice but that correspondence occurred after the trustee decision was made and was written to another party in an ongoing litigious dispute, rather than as advice to the trustee. It was said that the trustee minutes and resolutions included the definition of "dependant" and acknowledged that the estate was a potential beneficiary of the death benefit. Therefore, the trustee did not act on any misunderstanding.

It was further submitted, based on the evidence of the accountant, that the trustee had both acted on legal advice and on the advice of the accountant himself.

It was also argued that based on the objective evidence, the deceased did not want any part of the death benefits being paid to Mr Marsella, because of the appointment of Mrs Wareham as trustee and the signing of a death benefit nomination in favour of her grandchildren. It was also said that the trust deed contemplated a position of conflict because it envisaged that as Mrs Wareham as trustee, was also Superannuation dependant. As such she could appoint herself as the recipient of the death benefit and that the no-conflict rule of the trustee was waived in these circumstances, relying on a recent case of *Blenkinsop-v- Herbert.*

What the Court of appeal has now said

In rejecting the appeal, the Full Court of the Supreme Court made the following findings:

- The Court relied on one particular letter in the course of the litigation that, in its opinion, identified that the trustee had not considered whether Mr Marsella was a beneficiary to be considered in the payment of the death benefits. While it was argued that this letter occurred after the decision of the trustee and was part of the correspondence between the solicitors for the parties, the Court linked the contents of the letter with the death benefit resolutions which did not specifically mention Mr Marsella. This is notwithstanding the existence of previous case law that has held that no adverse inference should be drawn from a trustee who is not obliged to give reasons for its decision.

- On this basis, it was said that the trustee had failed to give real and genuine consideration to the interests of Mr Marsella. The Full Court did not challenge the trial judge's view that the outcome of the trustee's decision in paying all of the superannuation benefits to Mrs Wareham supported the conclusion that the trustee did not give real and genuine consideration. It said that it did not have reason to doubt the proposition that "a grossly unreasonable result may be evidence of a miscarriage of duty".
- That the principles in *Karger-v- Paul* do apply to SMSFs, but the Court left open the question of whether trustees have to properly inform themselves before making a decision in paying death benefits. It said that the 2010 High Court case of *Finch -v- Telstra super* did not distinguish between corporate, retail industry funds on the one hand and self-managed super funds on the other and that issue was not one that it had to decide upon.
- The fact that the purported binding nomination left no benefits to Mr Marsella and that there may have been good grounds for the discretion not to be exercised in favour Mr Marsella is irrelevant to the question of whether the trustee properly exercised their discretion to give real and genuine consideration as part of their function.
- That while a trust deed may contemplate a trustee being in a conflict by also being a potential death benefit dependent, there is a distinction between a potential conflict and an actual conflict concerning the distribution of the death benefits.
- In relation to the power of appointment specified in the trust deed, the Court agreed with the trial judge that the power in the trust deed was a "special power" which required the trustee to choose among an identified class of potential beneficiaries. This is different from a general power of appointment where an Appointor has virtually equivalent rights of ownership.
- A trustees discretion, even if it is unfettered and absolute, can be set aside without requiring evidence of bad faith if there is no evidence of real and genuine consideration being given to the interests of all potential beneficiaries.
- On the question of removal of the trustee, it was decided that even if the trustee reconsidered its position, the interest of all potential beneficiaries might not be given proper consideration and that the trustee may simply reinstate the decision that it made.

What lessons can be learnt for advisers and clients managing SMSF's

The initial decision and the Court of Appeal's decision in the *Marsella case* leave open a number of disturbing and potentially difficult outcomes for trustees when exercising decisions not only in the SMSF arena but in relation to all discretionary trusts in Australia. The following issues from the case arise for clients and advisers to consider:-

- A trustee's decision could be challenged, if there is evidence of conflict between the trustee and the beneficiary that could amount to either bad faith or the failure on the part of the trustee to give real and genuine consideration to the interests of that beneficiary and, particularly, if there is no distribution to that beneficiary;
- The *Marsella* case supports the view that specialist SMSF advice should be obtained, recorded and properly documented, potentially to be put into evidence where a trustee has to exercise a discretion. This is especially so for SMSFs and possibly for discretionary trusts. Such advice may also be required as to whether the trustee should or should not give reasons for its decision in circumstances where a potential beneficiary does not receive a benefit. If no reasons are given, a court will look for or imply any failure particularly if it paid to one beneficiary.
- While not decided, it would seem to be prudent that trustees have to actively make and be seen to making enquiries about a potential beneficiaries needs and resources in order to demonstrate that they have given real and genuine consideration before deciding on the payment of any death benefit where a discretion has to be exercised. This is where specialist advice is critical to this process as it will be difficult for a trustee to be criticised if they follow that advice (4)

Overall, the case reminds advisers and clients more than ever, of the importance of having all their documents in order to provide certainty in relation to what happens to a member's super benefits on death. Invalidly prepared documents or chain of documents can render what is intended to be a binding nomination, non-binding with the risks of a trustee being forced into a situation like *Marsella* and this is particularly critical for blended families or families in conflict.

(1) re *Narumon Pty Ltd [2018] QSC 185*
(2) see *Donovan –v- Donovan [2009] QSC 26; Munro -v- Munro [2015] QSC 61; Cantor Management-v-Booth [2017] SASCFC 122; and Hill-v-The Holly super fund: [2020] WASC 89*
(3) see: *Perry-v- Nicholson [2017]QSC 163*
(4) see *Ioppolo & Hesford-v- Conti* [*2013] WASC 389 at para 79,80*

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