

## Financial Services and Credit Monthly Update October 2023

### CONSUMER CREDIT

#### ASIC regulatory update

In a [speech](#) at the 33rd Annual Credit Law Conference on 18 October 2023, Greg Yanco, Executive Director for Regulation and Supervision at the Australian Securities and Investments Commission (**ASIC**) highlighted the following priorities and focus areas for ASIC in the credit sector:

- financial hardship;
- financially vulnerable credit consumers
- buy now, pay later;
- small amount credit contracts and consumer leases; and
- short-term credit facilities and continuing credit contracts.

Mr Yanco also discussed ASIC's work on the product design and distribution obligations, the Banking Code of Practice, the Financial Accountability Regime (**FAR**), scams and cyber and operational resilience.

### CONSUMER PROTECTION

#### 'Don't get burnt by the hype' campaign by ASIC

ASIC's latest consumer awareness [campaign](#) announced on 26 October 2023 aims to raise awareness of the risks associated with investment hype of the kind that occurred in the short squeeze of GameStop shares in January 2021. ASIC is running advertisements at screenings of [Dumb Money](#), the new movie which recounts the GameStop bubble.

### DIGITAL ASSETS

#### Consultation on digital asset platforms

The Federal Government is consulting on a regulatory framework for digital asset platforms. A proposals paper was [released](#) for comment on 16 October 2023. The Government proposes to bring digital asset platforms and other intermediaries within the existing financial services framework by introducing a new type of financial product called a 'digital asset facility'. The consultation closes on 1 December 2023.

#### ATO provides guidance on crypto investment losses

The Australian Taxation Office (**ATO**) has [reminded](#) SMSF trustees of the risks associated with crypto assets, noting instances of losses in crypto asset investments by SMSFs caused by crypto scams, theft, collapsed crypto trading platforms, and lost passwords. The ATO noted that many crypto assets were not commonly considered to be financial products, and as such may not be regulated by ASIC.

### FINANCIAL SERVICES

#### Updates to reportable situations regime

On 19 October 2023, ASIC [announced](#) amendments to the reportable situations regime which have been made in the *ASIC Corporations and Credit (Amendment) Instrument 2023/589*.

Under the changes, licensees do not have to report certain breaches of the misleading or deceptive conduct provisions and the false or misleading representations provision. The breaches must only impact one person (or the joint holders of a product), not cause any financial loss or damage, and not give rise to any other reportable situation.

In addition, licensees have also been given up to 90 days (from 30 days) to report a reportable situation that has underlying circumstances that are the same or substantially similar to an earlier reportable situation.

Full details of the reforms can be found in our article [here](#).

ASIC has also [released](#) Report 775 on the reportable situations regime for the period 1 July 2022 to 30 June 2023. ASIC remains concerned that only 11% of licensees have lodged reports to date. It believes that some licensees are taking too long to identify and investigate breaches, and to compensate consumers.

## FINANCIAL SYSTEM

### Financial Accountability Regime information package

On 3 October 2023, ASIC and the Australian Prudential Regulation Authority (APRA) [published](#) an information package on the FAR. The FAR regime will be jointly administered by APRA and ASIC and will take effect for authorised deposit-taking institutions (ADIs) on 15 March 2024 and the superannuation and insurance industries on 15 March 2025. The information package includes guidance for ADIs on the transition from the Banking Executive Accountability Regime (BEAR) to FAR and an ADI Accountability Statement template.

## PAYMENTS

### Payment systems reforms

Exposure draft legislation for amendments to the *Payment Systems (Regulation) Act 1998* (Cth) (PSRA) was [released](#) by Treasury on 11 October 2023. The amendments would expand the definitions of 'payment system' and 'participant' in the PSRA to allow regulatory oversight by the Reserve Bank of Australia (RBA) of new and emerging payment systems such as buy now pay later service providers and digital wallet providers. They would also introduce a new ministerial designation power to allow additional oversight of payment services that present a risk of national significance.

### Harmonised data requirements to enhance cross-border payments

The Bank for International Settlements' Committee on Payment and Market Infrastructures has published harmonised data requirements for cross-border payments (CPMI ISO 2022). The RBA, AusPayNet and Australian Payments Plus will [align](#) their ISO 2022 message usage guidelines with the CPMI ISO 2022 data requirements for cross border

payments prior to the end-2027 timeline for global adoption of CPMI ISO 2022.

## PRIVACY AND DATA

### Credit Reporting Code consultation

The Australian Retail Credit Association (ARCA) is [consulting](#) on variations to the *Privacy (Credit Reporting) Code 2014* (the CR Code) following the 2021 review of the CR Code. The consultation is open until 16 November 2023. The proposed changes include:

- specific definitions of 'account open date' and 'account close date';
- a varied definition of 'maximum amount of credit' for revolving credit contracts;
- a specific definition of 'maximum amount of credit' for reverse mortgages;
- clarifying the definition of 'month';
- requiring that the s 21D(3)(d) notice must be a standalone document;
- clarifying notification obligations;
- listing domestic abuse as an example of a circumstance beyond the individual's control for the purposes of correction requests;
- introducing a 'soft enquiries' framework; and
- a variation to the definition of 'capacity information' to include whether an individual is acting in the capacity as a trustee.

### OAIC annual report

The Office of the Australian Information Commissioner (OAIC) has [released](#) its 2022-23 annual report. Cyber security incidents were responsible for 42% of all notifiable data breaches during the period. The number of privacy complaints increased 34% over 2021-2022. The largest sector for the source of complaints was the finance sector.

## SUPERANNUATION

### Consultation on transparency of super fund expenditure

APRA is [consulting](#) on proposals increase visibility of how superannuation members' money is spent and invested. This would include publication of:

- total expenses for the industry by category and by internal, related outsourced and non-related outsourced arrangements for administration and operating expenses and for investment expenses;
- total expenses at individual fund level by category, including expenditure for marketing and sponsorships, industrial bodies, related parties, director and

- executive remuneration, and political donations by payee or service provider;
- total expenses with the name of the service provider where the provider is a promoter (such as a third party that receives a benefit for marketing a fund); and
- additional aggregated asset allocation data for fund investments in property and infrastructure, alternative strategy funds, listed equity and private equity.

The APRA consultation closes on 29 November 2023.

### Consultation on payday super

The Federal Government announced a commitment to introducing payday super in the last Budget. On 9 October 2023, Treasury [released](#) a consultation paper for input on implementing this initiative and a redesigned compliance framework to encourage employers to pay super as close as possible to payday.

### Superannuation fund mergers and defined benefit income streams

On 25 October 2023, the Federal Government [announced](#) that it would be making legislative amendments to the superannuation transfer balance cap for individuals with a capped benefit income stream, to ensure that fund members are not impacted due to the original income stream being treated as ceasing and a new one beginning on the occurrence of a merger or successor fund transfer between superannuation funds. The amendments are to apply retrospectively from 1 July 2017.

## DISPUTES AND ENFORCEMENT

### ASIC enforcement and regulatory update

ASIC has [released](#) its enforcement and regulatory update for the period April 2023 – June 2023. In the report ASIC has listed the following enforcement priorities for the regulator:

- enforcement action target poor design, pricing and distribution of financial products;
- failures by providers of general insurance;
- misconduct in the superannuation sector;
- combating and disrupting investment scams;
- misleading conduct in relation to sustainable finance, including greenwashing;
- protecting financially vulnerable consumers;
- unfair contract terms; and
- misconduct impacting First Nations peoples.

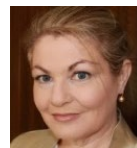
### Continuous disclosure failures by ANZ

On 13 October 2023, the Federal Court [found](#) Australia and New Zealand Bank Limited (**ANZ**) had breached continuous disclosure laws by failing to notify the Australian Securities Exchange that between approximately \$754 million and \$791 million of the \$2.5 billion of ANZ shares offered in an institutional placement in 2015 was to be acquired by its underwriters rather than placed with investors. The Judge concluded that this was material information which should have been disclosed.

### Charges laid alleging unlicensed credit activity

ASIC is [suing](#) Cigno Australia Pty Ltd (**Cigno**), its director Mark Swanepoel, and BSF Solutions Pty Ltd and its director, Brenton James Harrison, for allegedly providing credit without a licence. The action involves a 'No Upfront Charge Loan Model' used by Cigno in the second half of 2022.

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