



DWYER HARRIS



FINANCIAL SERVICES AND CREDIT

QUARTERLY UPDATE

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CONSUMER CREDIT

ASIC relief for short term arrangements following a hardship notice

On 25 February 2022, the Australian Securities and Investments Commission (**ASIC**) [extended](#) Class Order [CO 14/41] *Extension of transitional credit hardship provisions* for a further two-year period to April 2024. The class order relieves credit providers and lessors from the obligation to provide written notice to consumers about hardship contract variations of 90 days or less (otherwise known as a simple arrangement). ASIC [conducted](#) a consultation on whether the class order should be extended.

2022-23 Budget housing assistance

On 29 March 2022, Treasurer Josh Frydenberg [delivered](#) a speech on the release of the 2022-23 Budget indicating that the Home Guarantee Scheme will be doubled to allocate 50,000 places per year. The Treasurer also said that the Government's support for affordable housing will increase by \$2 billion through the National Housing Finance and Investment Corporation.

Mortgage broker remuneration model

The Federal Government has reportedly [dropped](#) a proposed review of mortgage broker trail commissions that was originally announced in 2019.

CONSUMER PROTECTION

ABA consultation on changes to the Banking Code of Practice

The Pottinger Review in October 2020 [recommended](#) that the definition of "small business" in the Banking Code of Practice (**Code**) be expanded so that the \$3 million threshold of total credit outstanding be increased to \$5 million. The Australian Banking Association (**ABA**) has accepted this recommendation, along with other recommendations in the Pottinger Review. These changes will be given effect to in the next edition of the Code. The Pottinger Review also recommended changes to how the Code addresses business groups, questioning the adequacy of the term "related entities." The ABA commissioned King & Wood Mallesons to [draft](#) a paper addressing this determination. Consultation on this paper ended on 28 February 2022.

Introduction of Unfair Contract Terms Bill

On 9 February 2022, the *Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022* (Cth) was [introduced](#) into Parliament. The Bill enhances protections against unfair contract terms in the Australian Consumer Law (**ACL**) and the *Australian Securities and Investments Commission Act 2001* (Cth).

Consultation on ACL consumer guarantees and supplier indemnification provisions

The Treasury has [sought](#) feedback on options aimed at improving the effectiveness of the consumer guarantee and supplier indemnification provisions under the ACL. The consultation process is aimed at ensuring that businesses comply with the ACL and assisting consumers to access the remedies they are entitled to. A review of the supplier indemnification options is intended to provide stronger incentives for manufacturers to reimburse sellers for the cost of providing a remedy where the manufacturer is at fault for the failure. The consultation process ended on 11 February 2022.

ACCC proposes new rules for digital platforms

On 28 February 2022, the Australian Competition and Consumer Commission (**ACCC**) [released](#) a Discussion Paper on potential new rules for the operation of digital platforms. The rules

proposed by the ACCC aim to increase consumer welfare in digital platform services. The rules affect digital platforms operating in areas such as social media, search engines, app marketplaces, general online retail marketplaces, and advertising technology.

CORPORATE

Meeting and document requirements to change to accommodate technology

On 22 February 2022, the *Corporations Amendment (Meetings and Documents) Act 2021* (Cth) [received](#) assent, amending the *Corporations Act 2001* (Cth) (the **Corporations Act**). The amendments will allow companies and responsible entities of registered schemes to:

- hold physical, hybrid, and virtual meetings if provided for by the entity's constitution;
- use technology to provide for the electronic execution of documents; and
- give members the flexibility to receive documents in hard or soft copy.

Amendments related to the signing and execution of documents commenced on 23 February 2022, while those related to meetings and sending documents commenced on 1 April 2022.

Modernising Business Communications Bill

On 17 February 2022, the *Treasury Laws Amendment (Modernising Business Communications) Bill 2022* (Cth) was [introduced](#). The Bill proposes a global communications regime for documents sent under the Corporations Act by allowing all those documents to be signed or executed electronically. The Bill will also allow other categories of documents to be sent electronically, and amend the criteria that entities must comply with before they are relieved from their obligations to provide certain documents to members.

The Bill also proposes to amend the *National Consumer Credit Protection Act 2009* (Cth) (the **NCCP Act**) so that documents can be given electronically or physically unless the consumer opts out (express consent is not required). It will allow documents to be given in electronic form by sending an "electronic postcard", among other methods. Recipients can elect physical or electronic delivery and nominate an address for notices, and the choice can be specific for particular classes of documents. If no nominated address is provided, the amendments would provide that:

- if the notice giver has not previously given a document of that kind – it can provide documents to last known residential or business address, or last known electronic address; and
- if the notice giver has previously given a document of that kind – it can give a notice advising it will send to a specified address unless an alternative address is nominated within 14 days.

A nomination or election would come into effect one business day after the giver receives the nomination or election, but if made within 7 days of a deadline to give a document, it would not need to be followed. Nominations and elections (and withdrawing them) can be in any form (e.g. over the phone).

In addition, under the Bill, obligations under various legislation that require certain notices to be published in newspapers will be replaced with an obligation to publish in a "manner that results in the notice being accessible to the public and reasonably prominent."

Modern slavery – ABA paper

On 31 March 2022 the ABA [released](#) its first edition working paper on modern slavery. The paper focuses on the construction and agriculture sectors. It seeks to provide a point of

reference for banks to operationalise modern slavery risk identification and management.

FINANCIAL ADVICE

FASEA closed

From 1 January 2022, the Federal Government has [closed](#) the Financial Adviser Standards and Ethics Authority and moved its standard-setting functions to the Treasury and the responsible Minister. ASIC is now responsible for the financial adviser exam. The first exam sitting of 2022 was held from 17 to 21 February 2022.

Important deadlines for financial advisers in 2022

ASIC has [issued](#) a release highlighting important obligations and deadlines financial advisers must consider in 2022.

Guidance for tax financial advisers under Better Advice Act

ASIC has [released](#) guidance for providers of tax (financial) advice services following the introduction of the *Financial Sector Reform (Hayne Royal Commission Response – Better Advice) Act 2021* (Cth), which partly came into effect on 1 January 2022.

ASIC guidance for social media influencers and licensees

On 21 March 2022, ASIC [published](#) an information sheet on social media financial influencers (also known as “influencers”). Please see our article [here](#) for more details.

Quality of Advice Review

On 11 March 2022, the final terms of reference for the ‘Quality of Advice Review’ were [released](#) and on 25 March 2022 the Issues Paper for the review was [published](#). The Quality of Advice Review will consider whether measures that have been implemented by government, regulators, and financial services entities have improved the quality of financial advice; whether further reforms or other changes are needed; and whether any measures or obligations are redundant or can be streamlined. The review will also consider how to ensure Australia’s regulatory framework relating to financial advice could better enable the provision of high quality, accessible, and affordable advice for retail clients. Treasury will be accepting submissions until 3 June 2022.

COVID-19 relief for financial advice to expire

ASIC has [announced](#) that it will allow the temporary relief in *ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2021/268* (Cth) to be automatically repealed on 15 April 2022. The instrument commenced on 15 April 2021 and extended certain relief initially introduced in April 2020 which exempted the requirement to provide statements of advice in some situations, and allowed advisers more time to give time-critical statements of advice.

Automated decision making and AI regulation issues paper

In March 2022, the Department of Prime Minister and Cabinet [released](#) an issues paper on automated decision making (ADM) and artificial intelligence (AI). The paper focuses on uncertainty and complexity in the technological sphere, rapidly evolving international developments on the regulation of ADM and AI, public trust and confidence in ADM and AI, the potential for bias or discrimination, transparency, discretionary decision making, and privacy. The Digital Technology Taskforce is accepting submissions in response to the Issues Paper until 22 April 2022.

FINANCIAL MARKETS

ASIC consults on revised ETP naming conventions

ASIC [released](#) Consultation Paper 356 *ETP naming conventions: Updates to INFO 230 (CP 356)* on 20 January 2022. ASIC sought feedback on proposals to update the guidance in Information Sheet 230 *Exchange-traded products: Admission guidelines* which provides information on naming conventions for licensed Australian exchanges that admit exchange traded products (ETPs).

ASIC amendments to market integrity rules

On 10 March 2022, ASIC [introduced](#) new market integrity rules aimed at addressing the technological and operational resilience of the securities and futures market participants. The new rules relate to change management, outsourcing, information security, business continuity planning, governance and resourcing, and trading controls.

ASIC Market Integrity Rules Class Waiver extended until 2023

On 25 January 2022, the *ASIC Market Integrity Rules (Securities Markets) Class Waiver (Amendment) Instrument 2022/55* (Cth) came into [effect](#). This instrument extends the operation of the *ASIC Market Integrity Rules (Securities Markets) Class Waiver 2018/303* (Cth) (**Class Waiver 2018/303**) to 30 November 2023. Class Waiver 2018/303 [exempts](#) a market participant that is not a retail client from having to comply with Rule 3.4.1 of the *ASIC Market Integrity Rules (Securities Market) 2017* (Cth). Rule 3.4.1 [requires](#) a market participant to give confirmation to a wholesale client in respect of each market transaction entered into on the client's instructions or on the client's managed discretionary account. Class Waiver 2018/303 only applies to market transactions in a derivatives market contract.

Proposed ASX rule amendments on investment vehicles

On 1 February 2022, the Australian Securities Exchange (ASX) [released](#) a consultation paper on proposed ASX rule amendments related to the listing of corporate collective investment vehicles (CCIVs) and certain other investment vehicles on the ASX market, and the quotation of their products on the ASX Quoted Assets (AQUA) market. ASX has proposed changes to the ASX Listing Rules to facilitate the listing of CCIV sub-funds, notified foreign passport funds, and New Zealand registered managed investment schemes. ASX also proposed changes to ASX Operations Rules to facilitate the admission of products to trading status on AQUA or for settlement through the ASX Managed Funds Settlement Service. ASX's consultation process ended on 18 March 2022.

Foreign investment reforms

In February 2022, Treasury [released](#) a package of draft amendments to the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth) and a discussion paper on the proposed amendments.

FINANCIAL PRODUCTS

Product intervention order on contracts for difference

On 6 April 2022, ASIC [extended](#) its product intervention order imposing conditions on the issue and distribution of contracts for difference (CFDs) for 5 years to 23 May 2027. The order has been in place since 29 March 2021.

Remake of class order on when debentures can be called secured notes

ASIC has [remade](#) ASIC Class Order [CO 12/1482] *When debentures can be called secured notes (CO 12/1482)* which was due to sunset on 1 April 2022. This allows debenture issuers to describe their debentures as secured notes in circumstances where security has been provided over intangible property, subject to various conditions. The instrument will remain in place until 29 March 2025.

FINANCIAL SERVICES

Licensing and custody requirements for crypto asset secondary service providers

On 8 December 2021, the Federal Government announced that it would consult on a licensing and custody regime for crypto assets secondary service providers (**CASSPs**). The Government defines a crypto asset as a “digital representation of value that can be transferred, stored, or traded electronically.” Crypto assets include cryptocurrencies, utility tokens such as filecoin and basic attention tokens, security tokens, and non-fungible tokens (**NFTs**). CASSPs are those who provide a range of services to allow consumers and businesses to access and use crypto assets, such as custody and storage, exchange, brokerage and dealing services, and operating a market.

On 21 March 2022, the Treasury [released](#) a Consultation Paper, *Crypto asset secondary service providers: Licensing and custody requirements*. The Consultation Paper outlines proposed obligations on CASSPs including:

- doing all things necessary to ensure that any market for crypto assets is operated in a fair, transparent and orderly manner;
- ensuring that directors and key persons responsible for operations are fit and proper persons and are clearly identified; and
- complying with AML/CTF provisions.

The Government is inviting submissions by 27 May 2022.

Senate report on FAR Bill, Financial Sector Reform Bill, and Last Report Levy Bill

In February 2022, the Senate Economics Committee [released](#) its report into the *Financial Accountability Regime Bill 2021 (Cth) (FAR Bill)*, the *Financial Sector Reform (Hayne Royal Commission Response No 3) Bill 2021 (Cth)* and *Financial Services Compensation Scheme of Last Resort Levy Bill 2021 (Cth)*. The Committee recommended that all the Bills be passed. The FAR Bill proposes to extend the Banking Executive Accountability Regime (**BEAR**) so that it applies to all Australian Prudential Regulation Authority (**APRA**) regulated entities. The Bills will also establish a Compensation Scheme of Last Resort that will facilitate the payment of up to \$150,000 to eligible consumers who have received a determination from the Australian Financial Complaints Authority (**AFCA**) that remains unpaid.

ASIC findings from review of responsible entity governance

On 31 January 2022, ASIC [released](#) findings from a review of the governance practices of 10 large responsible entities of management investment schemes. ASIC gathered information on several areas including business models, board composition, and governance.

Bill to provide relief for foreign financial services providers

On 20 December 2020, the Treasury [released](#) exposure draft legislation for providing regulatory relief for foreign financial service providers. The consultation process on the draft legislation

ended on 12 January 2022. Following this consultation period, the *Treasury Laws Amendment (Streamlining and Improving Economic Outcomes for Australians) Bill 2022 (Cth)* was [introduced](#) into the House of Representatives on 17 February 2022. The Bill proposes to amend the Corporations Act to:

- provide an exemption from the requirement to hold an Australian financial services licence (AFSL) for persons that provide financial services from outside Australia to professional investors;
- provide an exemption from the requirement to hold an AFSL for foreign companies both regulated by comparable regulators and who provide financial services to wholesale clients; and
- fast-track the licensing process for foreign companies seeking to establish more permanent operations in Australia by providing an exemption for foreign companies regulated by comparable regulators from the fit and proper person test when applying for an AFSL to provide financial services to wholesale clients.

ASIC consultation on financial services disclosure requirements

ASIC [released](#) Consultation Paper 358 *Remaking ASIC relief on PDSs, superannuation dashboards and FSGs* on 18 February 2022. ASIC is seeking feedback on proposals to remake relief in seven different legislative instruments relating to financial services disclosure requirements. ASIC's proposal would consolidate the seven instruments into three new instruments, without substantive changes.

Relief for business introduction services extended

Existing relief for business introduction services has been [extended](#) by ASIC until 1 October 2022. The relief applies to fundraising, financial product disclosure, anti-hawking and advertising requirements in the Corporations Act. Persons who rely on the relief from 1 April 2022 must however provide notice to ASIC. From 1 October 2022, the relief will be amended to extend the relief for interests in managed investment schemes until 1 April 2025.

INSOLVENCY

Government response to insolvent trading safe harbour final report

On 24 March 2022, the *Review of the Insolvent Trading Safe Harbour Final Report* was [published](#). The Final Report recommends ongoing education and awareness around the insolvent trading safe harbour provisions in the Corporations Act, simplification of the safe harbour provisions, and a comprehensive review of Australia's insolvency laws. On the same day, the Federal Government [released](#) its response to the Final Report. In its response, the Federal Government agreed to several proposed simplifications to the safe harbour provisions and noted the Recommendation 14 in the Final Report, which recommended that the Treasury commission a holistic in-depth review of Australia's insolvency laws. The Government also agreed with Recommendation 4 – that a best practice guide to safe harbour be developed by the Treasury in consultation with key industry groups.

Insolvency reform and the 2022-23 Budget

The 2022-23 Budget was [released](#) on 29 March 2022. The Budget allocates \$29.8 million over 4 years from 2022-23 to further insolvency law reform. In particular, funding will be allocated to implement reforms to unfair preference rules, clarify the treatment of trusts with respect to corporate trustees under Australia's insolvency laws, and implement the Government's response to the recommendations of the Review of the Insolvent Trading Safe Harbour (see item above).

INSURANCE

Making insurance claims under new reforms

Following amendments to the Corporations Act, persons that provide claims handling and settling services are [required](#) to hold an AFSL from 1 January 2022.

ASIC changes process for consumers seeking emergency payments

On 11 February 2022, the *ASIC Corporations (Cash Settlement Fact Sheet) Instrument 2022/59* (Cth) came into [effect](#). This instrument allows insurers to give emergency payments to consumers without first giving them a Cash Settlement Fact Sheet if certain conditions are met. This new relief can be used by insurers to process emergency payments for customers affected by severe flooding in Queensland and New South Wales in early 2022. The relief will expire in 2025.

2022 Insurance Brokers Code of Practice published

On 1 March 2022, the National Insurance Brokers Association of Australia (**NIBA**) [published](#) the 2022 Insurance Brokers Code of Practice. The Code is reviewed at least once every 3 years. The 2022 Code will take effect on 1 November 2022 and applies to all NIBA members and non-members who have subscribed to the Code. The Code sets out various commitments including in relation to the making and handling of complaints, the performance of services, disclosing remuneration, and supporting clients experiencing vulnerability.

ASIC remakes order on product disclosure statements for general insurance products

ASIC Class Order 11/842 relating to product disclosure requirements for general insurance products was due to sunset on 1 April 2022. ASIC has [remade](#) the Class Order for a further 5 years. The remade instrument has no notable changes.

PAYMENTS

Electronic Conveyancing National Law to be amended to require interoperability

The Australian Registrars National Electronic Conveyancing Council (**ARNECC**) has [released](#) a Ministerial Statement on amendments to the Electronic Conveyancing National Law (**ECNL**). The amendments will require an organisation approved as an Electronic Lodgement Network Operator (**ELNO**) to establish and maintain interoperability with each electronic lodgement network operated by another ELNO. The *Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022* (NSW) was [introduced](#) into the New South Wales Parliament on 15 February 2022 to implement these changes to the ECNL.

ASIC report on the ePayments Code

On 7 March 2022, ASIC [released](#) a report on feedback given in the current review of the ePayments Code.

ASIC intends to publish an updated Code in April 2022. A transition period of 12 months will apply. The main points in the report are as follows:

- The Code will not be extended beyond individual consumers to small business but it will extend to transactions made using the New Payments Platform (**NPP**).
- ASIC proposes to remove the requirement that subscribers must report annually to

- ASIC on unauthorised transactions.
- The distinction between the Code's unauthorised transactions provisions and card scheme chargeback frameworks will be maintained. There will be protection under the Code's unauthorised transactions provisions even if a deadline under the chargebacks framework is missed.
 - The definition of mistaken internet payment is to be clarified so that it only covers actual mistakes in inputting the account identifier – it will not extend to payments made to a scammer.
 - The mistaken internet payments process will apply not only where there are sufficient funds available in the unintended recipient's account to cover the mistaken internet payment (i.e. the current position in the Code) but also where only a portion of the funds is available. The sending authorised deposit-taking institution (**ADI**) must investigate a mistaken internet payment report and (if satisfied that there was a mistake) send a request to the receiving ADI for a return of the funds as soon as reasonably possible and, by no later than 5 business days.
 - ASIC's expectation is that the sending ADI should commence the process within 2 business days, depending on the facts of the case.
 - The Code will require both the sending and receiving ADIs to keep reasonable records of mistaken internet payments.
 - There will be clarification that an unauthorised transaction occurs only where a third party has made the transaction without the consumer's consent – it is not intended to cover when the consumer has made the transaction in question.
 - The Code will be clarified so that pass code security requirements mean that consumers are unable to disclose their pass codes to anyone.
 - Consumers will not be prevented under the Code from using screen scraping services.

Critical infrastructure

The *Security Legislation Amendment (Critical Infrastructure Protection) Act 2022* (Cth) received [assent](#) on 1 April 2022. It amends the *Security of Critical Infrastructure Act 2018* (Cth) and provides that specified critical infrastructure assets must adopt and maintain a critical infrastructure risk management program. It also provides for additional cyber security obligations that may be applied in relation to systems of national significance. It is proposed that critical financial market infrastructure assets that are a critical payment system will be designated as critical infrastructure under the legislation.

PRIVACY AND DATA

Consumer Data Right update

On 24 January 2022, the Treasury [released](#) a report on outcomes from the Consumer Data Right (CDR) Strategic Assessment. This report identified the area of 'Open Finance' as the next area that the CDR should be expanded to address. The changes will bring datasets from across insurance, superannuation, merchant acquisition, and non-bank lending services within the realm of the CDR, building on the Open Banking function of the CDR.

On 15 March 2022, the Treasury [released](#) a Consultation Paper on the extension of the CDR to the non-bank lending sector, merchant acquiring services, and superannuation sectors. Submissions closed on 12 April 2022.

On 14 February 2022, the Federal Government [announced](#) a statutory review of the CDR. The review will focus on the implementation of Open Banking and the introduction of new regulations that address the energy sector from late 2022. The review will aim to increase competition, promote value for consumers, and drive innovation across the data services industry.

On 1 April 2022 the Federal Government [announced](#) that non-major banks will be given an additional 3 months to implement joint account data sharing under the CDR. Non-major banks

will now be required to commence sharing of joint account data from 1 October 2022.

Amendments to the CR Code on hardship arrangements

On 10 March 2022, the Australian Information Commissioner [approved](#) various amendments to the *Credit Reporting (Privacy) Code 2014* (Cth) (**CR Code**). The amendments reflect the new financial hardship reporting system. The amendments also aim to ensure that consumers can access their credit rating for free once every 3 months, and provide greater protections for consumers around the use of financial hardship information on a consumer's credit report. The amendments to the CR Code come into effect on 22 April 2022 (for access to credit information) and 1 July 2022 (for financial hardship reporting).

PRUDENTIAL

APRA prudential standard on credit

ADIs must [meet](#) the requirements of the prudential standard APS 220 *Credit Risk Management* from 1 January 2022. This standard requires ADIs to implement a credit risk managing framework appropriate to their size, business mix, and complexity.

APRA is also currently [consulting](#) on a proposed new attachment to APS 220 which would require ADIs to have the ability to limit growth in certain forms of lending, moderate higher risk lending during periods of heightened systemic risk, and ensure that there is adequate reporting in place to monitor against limits.

On 10 March 2022, APRA [published](#) a new set of FAQs for ADIs on APS 220.

APRA update on aggregate Committed Liquidity Facility

On 6 January 2022, APRA [issued](#) a letter to ADIs announcing the aggregate Committed Liquidity Facility (CLF) has been reduced to \$102 billion on 1 January 2022 from \$140 billion on 10 September 2021. The update follows APRA's announcement in September 2021 that it expects locally incorporated ADIs which are subject to the Liquidity Coverage Ratio to reduce their CLF to zero by the end of 2022. It is expected that APRA will provide further updates on reducing the size of the aggregate CLF in May 2022.

APRA updates reporting schedule for new operational risk reporting standard

On 20 January 2022, APRA [released](#) for consultation an update to the reporting schedule for Reporting Standard ARS 115.0 *Capital Adequacy: Standardised Measurement Approach to Operational Risk* (**ARS 115.0**). The aim of this change is to simplify reporting requirements for ADIs by extending the reporting frequency for submissions on ARS 115.0 from quarterly to annually. The consultation process ended on 11 March 2022.

APRA publishes advice on how to manage compliance risks

APRA has [published](#) advice on how to manage compliance risk and stay out of headlines. APRA highlighted the need to have a defined approach for managing compliance risk, to have established processes to support compliance risk management practices, and to allocate accountability for managing compliance risk.

APRA invites consultation on Basel III liquidity reforms

On 3 March 2022, APRA [released](#) a Discussion Paper addressing a post-implementation review of the Basel III liquidity ratios in Australia.

APRA addresses reinsurance risks

On 8 March 2022, APRA [released](#) finalised revisions to Prudential Standard LPS 117 *Capital Adequacy: Asset Concentration Risk Charge (LPS 117)*. Revisions to LPS 117 were drafted to manage risks associated with the increased use of offshore reinsurers by the life insurance industry.

APRA Deputy Chair on improving governance in the mutuals sector

On 28 March 2023, APRA's Deputy Chair, John Lonsdale, [delivered](#) a speech to the Customer Owned Banking Association CEO and Directors Forum on improving governance for the mutuals sector. Mr Lonsdale's speech highlighted the importance of improving governance, with a focus on board tenure, capabilities, composition, and performance assessment. In his speech Mr Lonsdale drew particular attention to how many boards are bound by outdated constitutions requiring that directors be from certain geographic areas, and suggested that boards consider amending their constitutions to remove such provisions that "undermine their ability to operate effectively." Mr Lonsdale also advocated for boards to play a more active role in reviewing and challenging information reported by management on cyber resilience and ensuring their entities can recover from cyber-attacks.

APRA FAQs on associations with related entities

APRA has [released](#) new FAQs for ADIs on Prudential Standard APS 222 *Associations with Related Entities*.

APRA amendments to the definition of a significant financial institution

APRA has [released](#) a consultation on minor amendments to align and centralise the definition of a significant financial institution within the prudential framework.

SUPERANNUATION

Remake of the sunset super co-contribution regulations

The *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2004* (Cth) sunset on 1 April 2022. The *Superannuation (Government Co-contribution for Low Income Earners) Regulations 2022* (Cth) was [registered](#) on 18 February 2022 to ensure the continued operation of the super co-contribution.

APRA FAQs on outcomes assessment under SIS Act

Section 52(9) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) outlines the annual outcomes assessments related to regulated superannuation funds. On 24 February 2022, APRA [published](#) new FAQs and amended previous FAQs on the application of s 52(9) of the SIS Act.

ASIC acts against reciprocal audit arrangements

On 7 March 2022, ASIC [announced](#) actions it has been taking to address self-managed superannuation fund (**SMSF**) auditors involved in reciprocal audit arrangements. ASIC has accepted voluntary cancellations or imposed conditions on a number of SMSF auditors, such as restrictions in relation to audits of their personal funds, the performance of independence reviews, requiring additional ethics education, and the notification of their professional association.

Relief for retirement estimates extended

ASIC Class Order [CO 11/1227] gave conditional relief from licensing, conduct, and disclosure obligations connected to personal advice in the Corporations Act. On 31 March 2022, ASIC [extended](#) the relief for superannuation trustees who give their members retirement estimates on periodic statements. The relief has been extended for 9 months, allowing trustees to use the relief when sending annual statements for the 2021-22 financial year.

Retirement income covenant

On 10 February 2022 the Federal Parliament [passed](#) the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2021* (Cth), which will require trustees to have a retirement income strategy that outlines how they plan to assist their members in retirement. A trustee's retirement income strategy must consider how they will assist their members to balance maximising their retirement income, managing risks to income and having some flexible access to savings. Trustees must have their strategy formulated in writing and a summary publicly available from 1 July 2022.

AML/CTF

AUSTRAC guidance of source of funds and wealth checks

On 18 February 2022, the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) [released](#) new draft guidance to help reporting entities understand sources of funds and wealth. The draft guidance explains how to collect and verify this information in order to conduct the necessary source of funds and source of wealth checks on relevant customers.

AUSTRAC guidance on third-party reliance for customer identification

On 21 February 2022, AUSTRAC [released](#) updated guidance on the extent to which reporting entities can rely on customer identification procedures carried out by third parties. For these customer identification procedures to be relied on they must be conducted by a third-party that is:

- a reporting entity that is based in Australia, and has measures in place to comply with the customer due diligence and record keeping requirements; or
- a foreign entity regulated by one or more laws of a foreign country that gives effect to the Financial Action Task Force (**FATF**) recommendations relating to customer due diligence and record keeping and has measures in place to comply with obligations under those laws.

Financial crime guide on forced sexual servitude in Australia

AUSTRAC has [released](#) a financial crime guide to help businesses identify and report suspicious activity related to forced sexual servitude.

Proposed amendments to AML/CTF Rules

On 11 March 2022, AUSTRAC [released](#) proposed amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)*. The draft amendments to propose to:

- repeal Chapters 24-26 relating to movements of physical currency into or out of Australia, receipts of physical currency from outside Australia, and movements of bearer negotiable instruments into or out of Australia, and introduce a new Chapter 24 on reporting cross border movements of monetary instruments;
- amend Chapter 34 to revise requirements relating to notices about reporting obligations;

- introduce a Chapter 81, exempting financial institutions from registration obligations when they offer digital currency exchange services; and
- implement the amendment to the National Consumer Protection Framework for Online Wagering, which reduced the period that reporting entities have to carry out applicable identification procedures in relation to online gambling accounts from 14 days to 72 hours.

Senate review of AML/CTF regime

The Senate Legal and Constitutional Affairs References Committee has [released](#) its report on the adequacy and efficacy of Australia's AML/CTF regime. The report recommends that there be accelerated consultation on the implementation of tranche 2 reforms as recommended by FATF and ensure that AUSTRAC and Home Affairs have sufficient resources to adequately and effectively implement and manage the tranche 2 regime. It also recommends that advice be obtained on whether section 242 of the *Anti-Money Laundering and Counter-Terrorism Act 2006* (Cth) should be amended to ensure proper operation of legal professional privilege, and that there be a beneficial ownership register.

DISPUTES AND ENFORCEMENT

IDR data reporting requirements finalised

ASIC has [published](#) the final mandatory internal dispute resolution data reporting requirements in a handbook authorised by the *ASIC Corporations (Internal Dispute Resolution Data Reporting) Instrument 2022/205* (Cth). The data reporting requirements commence in 2023 for certain large financial institutions.

Statewide Superannuation to pay \$4 million penalty

On 17 January 2022, the Federal Court [ordered](#) Statewide Superannuation Pty Ltd (**Statewide**) to pay \$4 million in penalties for providing members with misleading information about their insurance by telling customers they had insurance cover when they did not. Furthermore, Statewide overcharged more than \$2.5 million in insurance premiums to members who did not have insurance as part of their superannuation.

The Court also found that Statewide failed to report these issues to ASIC in a timely manner. For the first time, the Federal Court imposed a penalty (\$500,000) for a delay in reporting the breach.

Complaints against MetLife Insurance within AFCA jurisdiction

In 2017 and 2018 complaints against MetLife were brought by a MetLife member relating to 2 separate insurance policies. One complaint was brought to the Financial Industry Ombudsman Service (**FOS**) and the other was brought to AFCA. The complaint made to FOS was transferred to AFCA in 2018, when AFCA handed down a decision in favour of the complainant.

In May 2019, MetLife commenced proceedings seeking declaratory relief to the effect that AFCA's determinations were not binding on MetLife. MetLife alleged that AFCA had no power to determine the first complaint because that power had been conferred upon FOS, and that the second complaint was "a complaint relating to superannuation" within the meaning of section 1053(1) of the Corporations Act.

On 27 January 2022, the Federal Court [found](#) that AFCA had jurisdiction to make determinations on both of the complaints. The claim by MetLife was dismissed and the crossclaim by AFCA was upheld.

RI Advice to pay \$6 million penalty

On 3 February 2022, the Federal Court [ordered](#) RI Advice Group Pty Ltd (**RI Advice**) to pay a \$6 million penalty for failing to ensure that John Doyle provided appropriate financial advice, acted in his clients' best interests, and put his clients' interests ahead of his own. Mr Doyle was a former financial adviser and authorised representative of RI Advice. Mr Doyle was ordered to pay an \$80,000 penalty after he inappropriately advised clients to invest and stay invested in complex financial products that were found to be not compatible with their interests.

ASIC update on compensation for financial aid misconduct by banks

ASIC has provided an [update](#) on compensation paid or offered by 6 of Australia's largest banks to customers who suffered loss or detriment because of fees charged for no service or because the banks provided non-compliant advice to them. AMP, ANZ, CBA, Macquarie, NAB, and Westpac have paid or offered a total of \$3.15 billion in compensation as of 31 December 2021. This includes almost \$1.3 billion between 1 July and 31 December 2021.

Aware fined \$20m for charging fees for no services

On 17 February 2022, the Federal Court [ordered](#) Aware Financial Services Australia (**Aware**) to pay a \$20 million penalty for charging fees for services it did not provide to over 25,000 customers. Aware was formerly known as State Super Financial Services Australia. Between August 2014 and June 2018 Aware charged customers \$50 million in fees for advice services as a part of its superannuation product. However, Aware did not provide the promised services. In handing down the \$20 million penalty, Justice Moshinsky noted that Aware had admitted liability and already paid \$105 million to affected customers in compensation.

High Court rules on asset-based lending unconscionable conduct

On 16 March 2022, the High Court [delivered](#) its decision in *Stubbings v James 2 Pt Ltd* [2022] HCA 6. The respondents were in the business of asset-based lending. The appellant acted as guarantor for a loan made to a company by the respondents of which he was the sole director and shareholder, with 3 properties he personally owned as security for the guarantee. The loan was arranged via a law firm acting as an agent for the respondent.

The Court of Appeal of the Supreme Court of Victoria had reversed the findings of the primary judge, finding that the practice of asset-based lending was not inherently unconscionable. The High Court unanimously allowed an appeal from the Court of Appeal, holding that in these circumstances the agent's conduct on behalf of the lenders amounted to unconscionable conduct.

The appellant suffered from a special disadvantage due to his unemployment, poor financial literacy, inability to understand the nature and risk of the transactions, and financial circumstances. The High Court determined that it was not essential for the respondents themselves to have actual knowledge of the appellant's special disadvantage. Kiefel CJ, Keane and Gleeson JJ noted that the respondents, through their agent, "sufficiently appreciated that reality that the exercise of their rights under the mortgages to turn the appellant's disadvantages to their own profit was unconscionable," as the dangerous nature of the loan was clear to the respondents but not to the appellant.

Westpac fined \$1.5m for mis-selling consumer credit insurance

On 7 April 2022 the Federal Court [ordered](#) Westpac Banking Corporation to pay a \$1.5 million penalty for mis-selling consumer credit insurance (**CCI**) with its credit cards and Flexi Loans to customers. During the period from April 2015 to February 2017, Westpac issued CCI policies to 141 customers who did not request the product. Westpac asked these customers to pay the insurance premiums and debited payment of the premiums from the customer's credit card or

facility. The court held that Westpac did not have the right to these payments.

BT Funds \$20 million penalty over commissions for insurance in superannuation

On 7 April 2022 the Federal Court [ordered](#) BT Funds Management Limited to pay a \$20 million penalty for incorrectly charging commission payments to members of one of its superannuation funds, in breach of the ban of these commissions under the Future of Financial Advice reforms.

ASIC action against Macquarie Bank

Civil penalty proceedings have been [commenced](#) by ASIC in the Federal Court against Macquarie Bank Ltd for failing to adequately monitor and control transactions by third parties such as financial advisers on cash management accounts of its customers. According to ASIC, there was limited monitoring by the bank of transactions made through its bulk transaction system using a fee authority, and these transactions did not pass through a fraud monitoring system or undergo manual checks to confirm that the transactions were for fees.

Anti-hawking charges against National Advice Solutions

National Advice Solutions Pty Ltd has been [charged](#) with 11 offences of offering to issue or sell a financial product through an unsolicited phone calls, following an investigation by ASIC.

ASIC sues Rent4Keeps and Layaway Depot

ASIC [announced](#) on 12 April 2022 that it is suing Rent4Keeps and Layaway Depot in separate proceedings. ASIC is alleging breaches of consumer protections under the NCCP Act, claiming that both businesses operate business models designed to avoid consumer protections for financially vulnerable consumers, including the annual cost rate cap under the NCCP Act.

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