



DWYER HARRIS



# FINANCIAL SERVICES AND CREDIT

## QUARTERLY UPDATE

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## CONSUMER CREDIT

### Small business exemption extended

On 11 November 2021, [amendments](#) were made to the *National Consumer Credit Protection Regulations 2010* (Cth) to extend the small business exemption (which had expired on 3 October 2021) for a period of 3 years, or until the proposed legislation to introduce responsible lending reforms takes effect. The small business exemption essentially exempts from the responsible lending obligations the provision of credit and credit assistance for regulated loans where the credit is genuinely for the purposes of a small business operated by the consumer (whether alone or with others) and those purposes are not merely minor or incidental in relation to the overall purposes of the credit or credit increase.

### ASIC consults on product intervention orders

On 9 December 2021, the Australian Securities and Investments Commission (**ASIC**) [released](#) a consultation paper proposing two product intervention orders to address alleged consumer detriment caused by certain lending practices.

Firstly, ASIC has proposed to make a short-term credit product intervention order in the same terms as *ASIC Corporations (Product Intervention Order - Short Term Credit) Instrument 2019/917*, which expired in March 2021. The previous order prohibited the provision of short term credit facilities and the charging of collateral fees and charges by short term credit providers and/or their associates, in circumstances where the credit fees and charges under the credit contract and the collateral fees and charges under a collateral contract, together, exceed the limits in the short term credit exemption.

Secondly, ASIC is proposing to make a continuing credit contract product intervention order to prohibit credit providers and their associates (including directors) from issuing continuing credit contracts in circumstances where total fees exceed the maximum permitted under the continuing credit contracts exemption in s 6(5) of the National Credit Code and reg 51 of the *National Consumer Credit Protection Regulations 2010* (Cth).

Comments on the consultation paper close on 21 January 2022.

## CONSUMER PROTECTION

### Review of the Banking Code of Practice

On 3 December 2021, the Australian Banking Association (**ABA**) [released](#) its review of the Final Report of the review of the Banking Code of Practice. The report covered some broad observations and issues regarding the Banking Code of Practice and also contains a number of recommendations. The ABA and its member banks will consider the report and determine their response and any next steps.

## CORPORATE

### Electronic meetings and execution of documents

The *Corporations Amendment (Meetings and Documents) Bill 2021* (Cth) was [introduced](#) on 21 October 2021. The Bill will establish a permanent mechanism to allow companies and registered schemes to hold hybrid (in person and remote) meetings and allow for the use of technology to execute, sign and share company and meeting related documents.

## Electronic Transactions Regulations amendments

The *Electronic Transactions Amendment Regulations 2021* (Cth) were [made](#) on 11 January 2022 and amend the *Electronic Transactions Regulations 2020* (Cth) (the **Electronic Transactions Regulations**). The Electronic Transactions Regulations include a list of Commonwealth laws exempt from the *Electronic Transactions Act 1999* (Cth) (the **Electronic Transactions Act**). The amendments provide an updated list of Commonwealth laws that are exempt from the Electronic Transactions Act, removing 33 exemptions and reducing the scope of one existing exemption relating to postal voting. The amendments do not affect the principal laws affecting financial services and credit that are included in the exemption list.

## ASIC reviews whistleblower policies

On 13 October 2021, ASIC [announced](#) that it had written to CEOs of public companies and trustees of superannuation entities, urging them to review their whistleblower policies. ASIC has a select sample of whistleblower policies and is concerned that the majority of those policies did not fully address the relevant requirements. ASIC said that it will monitor compliance with whistleblower policies and conduct further reviews in 2022.

## FINANCIAL ADVICE

### ASIC guidance on financial advice

On 5 November 2021, ASIC [released](#) an information sheet (**INFO 266**) on records of advice (**ROAs**) and three example ROAs. INFO 266 provides answers to FAQs from financial advisers regarding ROAs.

### Better Advice Act

*The Financial Sector Reform (Hayne Royal Commission Response - Better Advice) Act 2021* (Cth) (the **Better Advice Act**) received assent on 28 October 2021 and the main provisions commenced on 1 January 2022. The Better Advice Act amends the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**) and the *Corporations Act 2001* (Cth) (the **Corporations Act**) to:

- expand the role of the Financial Services and Credit Panel to operate as a single body for financial advisers;
- introduce new penalties and sanctions for financial advisers;
- create a two-stage registration process for financial advisers;
- transfer the functions from the Financial Adviser Standards and Ethics Authority (**FASEA**) to the Minister and to ASIC; and
- introduce a single registration and disciplinary system for financial advisers who provide tax advice.

### Financial Services Council white paper on financial advice

On 12 October 2021, the Financial Services Council (**FSC**) [released](#) a white paper on financial advice. The white paper proposes reforms to reduce the cost of financial advice and remove unnecessary regulation. It includes the following recommendations:

- raising the threshold under which consumers are identified as retail clients to those with assets of less than \$5 million, and index the threshold to CPI;
- ending the safe harbour steps for complying with the best interests duty;
- replacing statements of advice with a simpler, consumer-focused 'letter of advice';
- breaking the nexus between financial product and advice, and removing complex labels for different categories of advice, by recognising two categories: personal advice and general information; and

- moving to sustainable self-regulation by 2030.

The FSC commissioned KPMG to review the recommendations in the white paper. KPMG found that the proposed recommendations would reduce the cost of providing financial advice per client from \$5,335 to \$3,466 and would save financial advisers up to 32% of their time when providing advice to clients.

## Finfluencers

ASIC Commissioner Cathie Armour has warned in an [article](#) about financial influencers or 'finfluencers'. ASIC's concerns include the provision of unlicensed financial advice by finfluencers, potential conflicts of interest from collecting remuneration from multiple sources, and market misconduct such as pump and dump schemes.

## ASIC advice relief extended

The *ASIC Corporations (Amendment) Instrument 2021/848* [made](#) by ASIC on 13 October 2021 extends the record of advice relief measure, allowing financial advisers to provide a record of advice instead of a statement of advice to clients requiring financial advice. The instrument also allows financial advisers additional time (up to 20 business days, instead of 5 business days) to give their clients a statement of advice after time-critical advice has been provided. The relief measures will apply until 15 April 2022.

## FINANCIAL MARKETS

### ASIC report on cyber resilience of financial market firms

On 6 December 2021, ASIC [published](#) its report, Report 716 *Cyber resilience of firms in Australia's financial markets: 2020–21* on the cyber resilience of firms within Australian financial markets. The report findings indicated that there is consistent steady improvement in the cyber resilience of financial firms. The report also concluded that the disparity between large firms and small-medium enterprises (**SMEs**) is continuing to close, and that the cyber resilience of SMEs has also improved. ASIC is encouraging firms to consider good practices to target and limit supply chain risk management.

### Corporate Collective Investment Vehicles Regulations

The Treasury has [released](#) for consultation draft regulations and rules to support the *Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021* (Cth). The proposed regulations address:

- requirements for financial reporting and record keeping;
- arrangements for voting in the context of cross-investment;
- requirements for the custody of corporate collective investment vehicle (**CCIV**) assets, including where those assets are held in a non-Australian jurisdiction or in an omnibus account; and
- restrictions on cross-investment and other rules relating to the investment of a CCIV's share capital.

The draft regulations will enable the current product disclosure regime available for simple managed investment schemes to also be available for CCIVs in comparable circumstances.

The draft rules include amendments to the *Corporations Regulations (Passport) Rules 2018* (Cth) that facilitate the passporting of sub-funds of a retail CCIV in a way consistent with the regulation of CCIVs.



## FINANCIAL PRODUCTS

### ASIC updated guidance on crypto-asset related investment products

On 29 October 2021, ASIC [reissued](#) Information Sheet 225 *Crypto-assets (INFO 225)* and Information Sheet 230 *Exchange traded products: Admission guidelines (INFO 230)*. INFO 225 provides guidance on how crypto-assets may be regulated by financial services and other laws. See our in-depth article [here](#). INFO 230 sets out good practices for licensed Australian exchanges that admit exchange traded products (**ETPs**) and has been updated to deal with ETPs which have crypto-assets as their underlying assets.

### ASIC proposes extending CFD product intervention order

On 18 October 2021, ASIC [released](#) Consultation Paper 348 *Extension of the CFD Product Intervention Order (CP 348)* seeking feedback on a proposal to extend its product intervention order which imposes conditions on the issue and distribution of contracts for difference (**CFDs**) to retail clients. The product intervention order will expire on 23 May 2022 unless extended with the Minister's approval.

## FINANCIAL SERVICES

### Litigation funding reforms

The *Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021* (Cth) was [introduced](#) into the Federal Parliament on 27 October 2021. The Bill implements the Government's response to the report of the Parliamentary Joint Committee on Corporations and Financial Services in relation to litigation funding and the regulation of the class action industry. The Bill would amend the Corporations Act to establish a new type of managed investment scheme, called a class action litigation funding scheme. It also introduces additional requirements for the constitutions of managed investment schemes that are class action litigation funding schemes. The Bill has been referred to the Senate Economics Legislation Committee. The Committee's report due on 3 February 2022.

### Regional Banking Taskforce

On 22 October 2021, the Federal Government [announced](#) the establishment of a Regional Banking Taskforce to evaluate the effects of bank branch closures on rural and regional areas in Australia. The Taskforce has held meetings and consultations and [released](#) an issues paper, making recommendations on how to improve banking services and accessibility where branches have closed.

### FFSPs exposure draft legislation

The Treasury has [released](#) the first tranche of exposure draft legislation to provide licensing relief and a fast-tracked licensing process for foreign financial service providers (**FFSPs**). The exposure draft legislation includes:

- an expanded professional investor exemption from the requirement to hold an Australian Finance Services License for FFSPs when providing financial services from outside Australia to professional investors;
- a comparable regulator exemption, which exempts FFSPs authorised to provide financial services in a comparable regime when providing financial services to wholesale clients; and
- a fit and proper person test exemption for FFSPs regulated by comparable regulators.

## FINANCIAL SYSTEM

### ALRC report on financial services regulation

The Australian Law Reform Commission (**ALRC**) is conducting an inquiry into the potential simplification of laws that regulate financial services. On 30 November 2021, the ALRC [released](#) an interim report. In the report, the ALRC found that current regulations were unnecessarily complex. The report contains thirteen recommendations for reform. Submissions are due by 25 February 2022. Further interim reports are scheduled for September 2022 and August 2023, and the final report is due by 25 November 2023.

### Financial Accountability Regime

The Federal Government has [introduced](#) a Bill to establish the Financial Accountability Regime (**FAR**). The *Financial Accountability Regime Bill 2021* (Cth) was introduced on 28 October 2021. If the Bill passes, it will apply to the banking sector on 1 July 2022, and for the insurance and superannuation sectors, FAR will [apply](#) from 1 July 2023, or 18 months after receiving royal assent. The FAR is in essence an extension of the existing Banking Executive Accountability Regime to other regulated financial services providers.

## INSOLVENCY

### Consultation paper on treatment of trusts in insolvency

On 15 October 2021, the Treasury [released](#) a consultation paper on the treatment of trusts under insolvency law. Currently, Australian corporate insolvency legislation does not expressly cover how corporate trusts are dealt with during insolvency. The results and outcome of the consultation are expected in early 2022.

## INSURANCE

### ASIC consults on remaking class orders on PDS requirements

On 15 November 2021, ASIC [released](#) a consultation paper which proposes to remake a class order on product disclosure statement (**PDS**) requirements where quotes for general insurance products are given during a telephone call that is not unsolicited. The new proposed instrument would continue the relief provided by the current ASIC class order.

### ASIC encourages super trustees to regularly check member outcomes

On 10 December 2021, ASIC [announced](#) the results of a review of the practices of 5 large super funds that provide income protection insurance on an opt-out basis for members.

ASIC found that trustees were failing to give clear explanations to their members concerning their insurance benefits. Disclosures regarding offset clauses were incomplete or too difficult for members to understand, and there was no evidence that trustees conducted a thorough analysis of the impact of offset clauses on their members.

ASIC has written to the trustees of the 5 funds, recommending that they thoroughly analyse data from insurers to deduce how offsets affect member outcomes, clearly explain the concept of 'offset' clauses to members, and improve disclosure of income protection offsets and benefits to members.



## PAYMENTS

### Transforming Australia's Payments System

On 8 December 2021, the Government released its [response](#) to three recent inquiries concerning the payments system, the [Review of the Australian Payments System](#), the [Senate Select Committee on Australia as a Technology and Financial Centre Final Report](#), and the [Parliamentary Joint Committee Corporations and Financial Services Report on Mobile Payment and Digital Wallet Financial Services](#).

Please see our article [here](#) which includes a summary of the Government's response.

### Payments System Board review of retail payments regulation

On 22 October 2021, the Payments System Board (PSB) [released](#) its Conclusions Paper on its review of retail payment regulation. The paper proposed new policy actions to the PSB's standards for card payments, including dual network debit cards, least cost routing of debit transactions, interchange fees and scheme fees. The PSB also concluded that it would be in the public interest for buy now, pay later providers to remove their no-surcharge rule.

## PRIVACY AND DATA

### Privacy Act discussion paper

In response to the Digital Platforms Inquiry conducted by the Australian Competition and Consumer Commission (ACCC), the Attorney General's Department [released](#) a discussion paper on 25 October 2021. The discussion paper outlines and requests feedback on proposed amendments to the *Privacy Act 1988* (Cth) (the **Privacy Act**), including options for implementing privacy-specific recommendations to better protect consumer data. It also seeks feedback on the application of the Privacy Act and how it is regulated. Feedback and submissions were due by 10 January 2022.

### Online Privacy Bill Exposure Draft

On 22 October 2021, the Attorney General's Department [released](#) an exposure draft Bill with proposed amendments to the Privacy Act to address privacy issues posed by online platforms. The *Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021* (Cth) proposes to introduce a binding online privacy code for social media and other online platforms and to increase penalties and enforcement measures.

### Digital identity legislation – exposure draft

On 1 October 2021, the Minister for Employment [released](#) the exposure draft of the *Trusted Digital Identity Bill* (Cth), to support the expansion of the Australian Government Digital Identity System. The Bill aims enhance consumer protection and identity verification when accessing online services.

### CDR update

From 1 November 2021, non-major banks are required under the Consumer Data Right (CDR) to share consumer data on residential, investment property and personal loans. In addition, major banks are required to share CDR data for business accounts.

The ACCC has conducted a [consultation](#) on information security self-assessment for sponsored accreditation under the CDR regime.

On 14 December 2021, the Federal Government [released](#) its response to the *Final Report of the Inquiry into Future Directions for the Consumer Data Right* (the **CDR Inquiry**). The CDR Inquiry was asked to examine how the CDR regime could be expanded to further enhance consumer and privacy safeguards. The response details the Government's position on the recommendations in the report of the CDR Inquiry. With a couple of exceptions, the Government generally agrees with all of the report's recommendations.

## APRA reviews cyber resilience

The Australian Prudential Regulation Authority (**APRA**) [announced](#) in November 2021 that it had recently completed two pilot initiatives as part of its cyber security strategy: a technology resilience data collection, and an independent assessment of a pilot set of entities' compliance with CPS 234. APRA says that the insights gained from the two pilots, and from APRA's supervisory activities, reinforce APRA's view that boards need to strengthen their ability to oversee cyber resilience. APRA expects boards to have the same level of confidence in reviewing and challenging information security issues as they do when governing other business issues.

### PRUDENTIAL

## Preparing for zero and negative interest rates

On 28 October 2021, APRA [released](#) its final expectations regarding preparedness of authorised deposit-taking institutions (**ADIs**) for zero and negative interest rates. These expectations relate to financial products and activities, but exclude business lending, residential mortgages, personal loans and credit cards. APRA has recommended that ADIs develop tactical solutions to implement zero and negative rates by 31 July 2022.

## New bank capital framework

On 29 November 2021, APRA [announced](#) that it had finalised its new bank capital framework. The new framework aims to strengthen levels of capital and aligns the Australian standards with the international Basel III requirements. APRA also released draft guidance on the new framework.

## Macroprudential policy framework

On 11 November 2021, APRA [released](#) an information paper on its framework for macroprudential policy and proposed new credit-based measures. It covers the risk factors APRA uses to identify emerging threats to financial stability, the policy tools APRA can choose from, and consultation with other members of the Council of Financial Regulators as part of the decision-making process.

APRA has also commenced a consultation into an update to APS 220 *Credit Risk Management* that would require banks to ensure they could implement limits on higher risk residential mortgage and commercial property lending in a timely and effective manner.

## APRA final guidance on remuneration standards

APRA has [issued](#) its final prudential practice guide for the new prudential standard, CPS 511 *Remuneration*, which commences on 1 January 2023.

## APRA risk culture 10 dimensions framework

In October 2021, APRA [released](#) details of its Risk Culture 10 Dimensions, which is a framework designed to assess the risk culture of entities. APRA has announced its plans to carry out risk culture surveys of at least 60 banking, superannuation and insurance entities

between October 2021 to October 2022.

## APRA proposals for private health insurance capital framework

On 13 December 2021, APRA [released](#) its proposals regarding its review of the private health insurance capital framework. APRA's proposals increase the minimum capital requirements, but no insurer would need to increase premiums to meet this higher capital threshold. Written submissions are due by 31 March 2022.

## APRA and RBA joint statement on climate change

APRA and the Reserve Bank of Australia (RBA) have [published](#) a joint statement detailing the actions both APRA and RBA are taking to ensure regulated entities in Australian financial system are prepared to respond to the financial risks of climate change.

## APRA final guide on climate change (CPG 229)

On 26 November 2021, APRA [published](#) its final prudential practice guide on climate change financial risks (CPG 229). The guide is intended to assist insurers, banks and superannuation industries mitigate the financial risks associated with climate change. The guide does not prescribe a specific or mandatory method of managing the risks, but encourages well-informed decision making and accounting for stakeholders' interests.

## APRA consults on financial risk contingency planning

On 2 December 2021, APRA [announced](#) that it was consulting on two new prudential standards. CPS 190 *Financial Contingency Planning* is to ensure that all APRA regulated entities have plans for responding to severe financial stress. CPS 190 *Resolution Planning* would require large or complex APRA-regulated entities to take pre-emptive actions so that if they fail, APRA can resolve them with limited adverse impacts. A consultation process is now under way and it is expected that the new prudential standards will come into force from 1 January 2024.

## APRA update on APS 220 credit risk management

APRA has provided an update on APS 220 *Credit Risk Management* (APS 220). On 10 December 2021, APRA [reminded](#) that ADIs will be required to meet the requirements of APS 220 from 1 January 2022.

## APRA SPS 250 Insurance in superannuation

APRA [released](#) its final revisions to Prudential Standard SPS 250 *Insurance in Superannuation* (SPS 250) on 12 November 2021.

## SUPERANNUATION

### Changes to superannuation calculators

ASIC [released](#) a Consultation Paper, *Superannuation forecasts* (CP 351) on 18 November 2021, proposing updates to relief and guidance for superannuation forecasting tools, including calculators and retirement estimates. ASIC's proposed changes include:

- continuing to provide relief from personal financial advice for individuals who provide superannuation calculators and retirement estimates;
- a single framework describing how calculators will be provided under ASIC's relief; and
- establishing specific standards for 'default' retirement ages and CPI.

## Portfolio holdings disclosure regulations

The *Corporations Amendment (Portfolio Holdings Disclosure) Regulations 2021* (Cth) (**PHD Regs**) were [made](#) on 11 November 2021. Their purpose is to provide superannuation trustees with certainty regarding the way portfolio holdings information should be disclosed to the public. The PHD Regs require trustees to take a snapshot of portfolio composition of each of their investment options as of 30 June and 31 December each year and publish this information on their website within 90 days.

## ASIC guidance for employers on communicating super options

In October 2021, ASIC [released](#) an information sheet (**INFO 89**) for employers, setting out its views on how they can communicate to their employees about superannuation options without compromising their legal obligations.

### AML/CTF

## Changes to AML Rules

Amendments were [made](#) on 9 December 2021 to the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (No. 1) (the **AML/CTF Rules**). The amendments add Chapters 79 and 80 to the AML/CTF Rules and amend Chapter 48 of those rules.

Chapter 79 of the AML/CTF Rules sets out the special circumstances in which a reporting entity may carry out the applicable customer identification procedure (**ACIP**) in respect of a customer, after commencing to provide a designated service of opening an account. For a period of 15 business days after commencing to open an account, a reporting entity may accept deposits to the account and provide a designated service which is incidental to the account opening or deposit. After the end of the 15 business day period no deposits can be accepted and no other designated services provided until ACIP is completed. The reporting entity may rely on this exemption if:

- it has determined on reasonable grounds that doing so is essential to avoid interrupting the ordinary course of business and that any additional ML/TF risk arising from carrying out the ACIP after commencing to open the account is low; and
- the entity has implemented appropriate risk-based systems and controls to effectively manage the overall ML/TF risks and has appropriate risk-based systems and controls in place to ensure the reporting entity carries out ACIP on the customer as soon as practicable.

New Chapter 80 excludes certain types of products unintentionally caught by the definition of a 'stored value card' (**SVC**) in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the **AML/CTF Act**). Paragraph 80.2(1) prescribes that an 'account' is not a SVC for the purposes of the AML/CTF Act. This means that all accounts, including those provided by reporting entities in relation to designated services in Tables 1 and 3 in 6(2) of the AML/CTF Act, will not be captured by the SVC definition. 'Account' is defined in s 5 of the AML/CTF Act. Paragraph 80.2(2) prescribes that a card or other instrument used only for the purposes of purchasing an entry into a lottery, or redeeming winnings in respect of a lottery, is not a SVC.

Chapter 48 of the AML/CTF Rules includes exemptions of specified designated services relating to salary packaging administration services from the AML/CTF Act. The amendments expand the current exemption relating to salary packaging services to include the specified designated services when they relate to payroll and superannuation clearance services. The amendments do not change the existing definition of salary packaging in Chapter 48.

## Amendments to the Autonomous Sanctions Act

The *Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Act 2021* (Cth) received [assent](#) on 7 December 2021. The Act amends the *Autonomous Sanctions Act 2011* (Cth) to expand Australia's existing country-specific sanctions regime, so that Australia can sanction responsible individuals or entities, irrespective of where the conduct occurred.

## AUSTRAC statement on de-banking

On 29 October 2021, AUSTRAC [published](#) a statement on de-banking, acknowledging the disproportionate de-banking of money transfer businesses (remitters), digital currency exchanges, not-for-profit organisations and financial technology businesses. AUSTRAC said that while the decision to close an account may remain a necessary risk control, it considers that with appropriate systems and processes in place, banks should be able to manage high risk customers, and that it expects banks and all regulated businesses to adopt a case by case approach to managing money laundering and terrorism financing risks.

## AUSTRAC guidance on geographical link test

AUSTRAC has [released](#) guidance on applying the geographical link test. If a person provides designated services that have a geographical link to Australia, that person is a reporting entity and must comply with anti-money laundering and counter-terrorism financing (AML/CTF) obligations. To have a geographical link to Australia, a person must meet one of the following criteria:

- providing a designated service at or through a permanent establishment located in Australia;
- a resident of Australia providing a designated service at or through a permanent establishment located in a foreign country; or
- a subsidiary of a company that is a resident of Australia, providing a designated service at or through a permanent establishment located in a foreign country.

The only exception to the geographical link requirement is a remittance network provider operating a network of affiliates in Australia.

## AUSTRAC financial crime guide on payment tax fields

In November 2021, AUSTRAC [published](#) a financial crime guide on payment text fields to assist financial providers to identify and resolve the issues of payment text fields leading to criminal communication.

## DISPUTES AND ENFORCEMENT

### Compensation Scheme of Last Resort

On 28 October 2021, Bills were [introduced](#) for a Compensation Scheme of Last Resort (CSLR). The Bills were referred to the Senate Economics Legislation Committee on 25 November 2021, and a report of the Committee is due on 15 February 2022. The CSLR will provide compensation where a determination issued by AFCA remains unpaid and the determination relates to a financial product or service within the scope of the scheme. The Commonwealth will fund the establishment of the scheme and its operation in the first year. A levy will be imposed on the financial services industry to fund the scheme in future years.

### AFCA to consult on categorising complaints

In mid-November 2021, AFCA [noted](#) that the currently proposed scope of the CSLR treats complaints about losses arising from the sale, distribution and operation of managed investment

schemes and financial products and the provision of financial advice differently. AFCA said that it would provide additional clarity to the sector and consumers on how it currently deals with and categorises these complaints. AFCA will also be issuing an interim fact sheet and consulting with relevant stakeholders, including the financial advice industry, about a more formal approach document to act as a guidance document. Further updates and information are expected to be released early 2022.

## **ASIC proposes updated guidance on remediation**

On 17 November 2021, ASIC [released](#) proposals to update its Regulatory Guide 256 *Consumer remediation*. Comments close on 11 February 2022.

## **ASIC proceedings against Ferratum over prohibited credit fees**

In November 2021, ASIC commenced proceedings against Ferratum Australia Pty Ltd (**Ferratum**) alleging that Ferratum charged prohibited fees and excessively charged customers who paid off their loans in advance. ASIC says that during the period March 2019 to August 2021, Ferratum charged customers prohibited fees, including direct debit fees, entered contracts with customers that imposed these prohibited fees, and incorrectly calculated how much borrowers owed Ferratum.

## **ASIC sues Ultimate Credit Management over debt collection practices**

On 18 October 2021, ASIC [announced](#) that it had commenced civil proceedings against Ultimate Credit Management Pty Ltd (**Ultimate Credit Management**). ASIC claims that Ultimate Credit Management commenced debt collection proceedings in New South Wales against borrowers when the borrowers did not live in New South Wales.

## **Increasing capital requirements for Heritage Bank**

Heritage Bank Limited (**Heritage**) has been [ordered](#) by APRA to increase its minimum capital requirement by \$5 million through an operational risk capital add-on. Heritage had incorrectly reported capital because of weaknesses in operational risk and compliance frameworks.

## **La Trobe to pay \$750,000 penalty for misleading marketing**

In November 2021, the Federal Court [ordered](#) La Trobe Financial Asset Management (**La Trobe**) to pay a \$750,000 penalty for false and misleading marketing of the La Trobe Australian Credit Fund (the **Fund**). La Trobe's advertising in magazines and websites included statements that any capital invested in the Fund would be 'stable'. ASIC alleged that this statement implied there was no chance of loss for investors. The Court found that the wording of 'stable' implies no risk of loss, and was therefore misleading.

## **ASIC sues Freedom Insurance director over insurance sales incentives**

ASIC has [begun](#) civil proceedings against a former director and manager of Freedom Insurance Pty Ltd for its sales incentive programs. ASIC claims that they were involved in breaches of conflicting remuneration requirements because the programs prioritised sale targets instead of the needs of clients.

## **ASIC action against IAL over insurance discounts**

ASIC has [commenced](#) legal proceedings against Insurance Australia Limited (**IAL**) in the Federal Court. ASIC claims that IAL made false representations to NRMA customers, promising that they were eligible for discounts, but failed to apply the discounts. ASIC contends that this misconduct affected over half a million customers.



ASIC has also called on all general insurers to:

- identify differences between the prices (including discounts) they promised their customers (over at least the past 5 years) and what those customers were charged;
- remediate customers who have been adversely impacted. This includes refunding customers who have overpaid their premiums; and
- rectify the systems and governance practices that led to the promised not being honoured.

## **CBA pleads guilty to mis-selling consumer credit insurance**

The Commonwealth Bank of Australia (**CBA**) has [pleaded](#) guilty to 30 criminal charges of making false representations to 165 customers, regarding consumer credit insurance. CBA was found to have misled its customers over the period 2011 to 2015 by suggesting that they could make a claim against their CBA CreditCard Plus and Loan Protection Policies, when the claims were not available to customers. The matter was prosecuted by the Commonwealth Director of Public Prosecutions after an investigation and referral by ASIC.

## **Colonial First State \$20 million penalty for misleading conduct**

The Federal Court has [ordered](#) Colonial First State Investments Limited (**CFS**), the trustee for Colonial First State FirstChoice Superannuation Trust (**FirstChoice Fund**) to pay a penalty of \$20 million. The Federal Court ruled that CFS breached the ASIC Act and the Corporations Act in its communications to its members, finding that CFS misled its members by falsely stating that legislation required CFS to contact them to obtain an investment direction. CFS also failed to tell its members that if members did not give an investment direction, CFS had to transfer the member's super to a MySuper product. The Federal Court found that the misleading communication was intended to encourage members to stay with the FirstChoice Fund rather than move to the MySuper product.

## **Contact us**



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