



DWYER HARRIS



FINANCIAL SERVICES AND CREDIT

QUARTERLY UPDATE

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GENERAL

Australian Federal election

The Australian Federal election was held on 21 May 2022. The Australian Labor Party has [secured](#) a majority government. As Labor does not have a majority in the Senate, negotiation with other parties will be critical to ensuring legislation is passed. Following the election, Prime Minister Anthony Albanese has [confirmed](#) his first full ministry. Notable appointments include Dr Jim Chalmers as Treasurer and Stephen Jones as Assistant Treasurer and Minister for Financial Services.

CONSUMER CREDIT

BNPL to be regulated under Labor

On 8 June 2022, the new Financial Service Minister, Steven Jones, [detailed](#) the Labor Government's intention to regulate the buy-now-pay-later (**BNPL**) industry in an interview. Currently, as BNPL operators do not charge interest or fees to customers who pay their payments on time, and so are not regulated under the *National Consumer Credit Protection Act 2009* (Cth) (**National Credit Act**). Mr Jones indicated that the Government intends to bring BNPL under credit laws, even after the industry [implemented](#) a code of practice in March 2021.

Home Guarantee Scheme

The home guarantees administered by the National Housing Finance and Investment Corporation have been revamped with effect from 1 July 2022. The Home Guarantee Scheme now includes:

- The First Home Guarantee (formerly known as the First Home Loan Deposit Scheme) to support eligible first home buyers to buy their first home sooner, with a deposit as little as 5%. From 1 July 2022, 35,000 places are available each financial year to eligible first home buyers.
- The Family Home Guarantee to support eligible single parents with at least one dependent child to buy a home, with a deposit as little as 2%. From 1 July 2022 to 30 June 2025, 5,000 places are available each financial year to eligible single parents with at least one dependent child.

The former New Home Guarantee is no longer available for new applications from 1 July 2022.

CONSUMER PROTECTION

ACCC digital platforms inquiry

On 28 April 2022, the Australian Competition and Consumer Commission (**ACCC**) [released](#) *Interim report No. 4 – General online retail marketplaces* as part of its 'Digital platform services inquiry.' The report examined emerging competition and consumer issues associated with a rise in the use of online retail marketplaces. The ACCC indicated online marketplaces should be more transparent about factors that influence how prominently products are displayed. The ACCC also highlighted its advocacy for the introduction of an economy-wide prohibition on unfair trading practices to cover conduct currently excluded from the Australian Consumer Law, which may potentially address rising concerns related to the use of data collected on online marketplaces. The ACCC has not identified the same competition concerns associated with online marketplaces such as eBay, Amazon, and Kogan as it has with other digital platform services like search engines and social media. The ACCC will report to the Australian Government in a fifth interim report, due on 30 September 2022, on what law reform is recommended to better protect consumers.

ACCC speech on regulating financial services

On 31 May 2022, ACCC Chair Ms Gina Cass-Gottlieb [delivered](#) a speech at the AFR Banking Summit. The speech focused on the ACCC's priorities and approach to regulating the financial services sector. The ACCC Chair spoke about the importance of promoting competition and investigating anti-competitive conduct, specifically in relation to payment services and digital platforms payments connected to programs like Apply Pay and Apple Wallet. Ms Cass-Gottlieb also spoke about the importance of the Consumer Data Right.

CORPORATE

Takeovers Panel Reform

On 1 April 2022, the Government [released](#) a Consultation Paper on the operation of takeovers and schemes generally, and the role of the Takeovers Panel, the Australian Securities and Investments Commission (**ASIC**), and the courts in regulating takeovers and schemes. The consultation process ended on 3 June 2022.

ASIC calls for better disclosure following financial reports review

ASIC has a financial reporting surveillance program which focuses on monitoring the compliance of selected listed companies with the *Corporations Act 2001* (Cth) (the **Corporations Act**) and Australian Accounting Standards. Following a review of the financial reports of 70 listed entities for the 2020-2021 financial year, ASIC has made further enquiries with 18 entities. These enquiries relate to several matters including the adequacy of disclosure of material business risks that may affect the achievement of a listed entity's prospects, the reasonableness of figures used to reflect expected cash flows, and lease accounting.

On 23 June 2022, ASIC Commissioner Sean Hughes [made a call](#) for the better disclosure of business risks and asset values. He said that the impact of changing market conditions on businesses was not being adequately disclosed in financial reports.

DIGITAL ASSETS

Crypto not taxed as foreign currency

The Federal Treasurer, Dr Jim Chalmers, [released](#) a statement on the taxation of crypto assets on 22 June 2022. In the media release, Dr Chalmers announced that the Federal Government will move to enact legislation to confirm that crypto assets will not be regarded as a foreign currency for tax purposes. However, capital gains tax will continue to apply to crypto assets held as investments.

FINANCIAL ADVICE

Existing providers given extension to obtain qualifications

The *ASIC Corporations (Existing Providers) Instrument 2022/241 2022* (Cth) [commenced](#) on 2 April 2022. As a result, affected existing providers who have passed the financial exam will be eligible to be authorised by an Australian financial services (**AFS**) licensee to provide personal advice and will not be required to obtain an approved degree, qualification, or complete an approved course until 1 January 2026. This instrument remedies an unintended consequence of the *Financial Sector Reform (Hayne Royal Commission Response – Better Advice) Act 2021* (Cth) whereby some individuals became ineligible to be authorised to give personal advice.

Financial capability service providers exemption renewed

Made in 2011, ASIC Class Order CO 11/927 allowed money management services providers,

now known as financial capability service providers, to be exempt from AFS licensing requirements under the *Corporations Act 2001* (Cth) (**Corporations Act**), enabling them to produce financial product advice about basic deposit services where those services were a part of the service they provided. The class order sunset on 1 April 2022 but has been remade in the form of *ASIC Corporations (Commonwealth Financial Counselling-Financial Capability Services) Instrument 2022/221* (Cth), which commenced that same day. The new instrument is due to sunset on 1 April 2025.

ASIC explains warnings and reprimands for financial advisers

The *Financial Sector Reform (Hayne Royal Commission Response - Better Advice) Act 2021* (Cth) introduced a requirement for ASIC to give warnings and reprimands to financial advisers in certain circumstances. On 9 June 2022, ASIC [released](#) an information sheet on warnings and reprimands given to financial advisers. The information sheet explains what warnings and reprimands are, when and how ASIC will issue warnings or reprimands, and the right of financial advisers to review ASIC's decision to give them a warning or reprimand.

FINANCIAL MARKETS

Australian Business Securitisation Fund Review

On 1 April 2022, the Treasury [published](#) the Final Report for the Australian Business Securitisation Fund Review. The *Australian Business Securitisation Fund Act 2019* (Cth) established the Australian Business Securitisation Fund (**ABSF**). The ABSF was created to increase the availability, and reduce the cost, of credit provided to small and medium enterprises by the Commonwealth investing in debt securities. The Treasury's report indicates the ABSF is making progress towards the objectives of the Act.

Government response to inquiry into foreign investment proposals

On 4 April 2022, the Federal Government [released](#) its response to the Final Report of the Senate's inquiry into foreign investment proposals. The Government's 2021 foreign investment reform package included measures to address national security risks; strengthen the existing system, particularly as it relates to compliance by foreign investors; and streamline investment in non-sensitive businesses. The Government's response supported the recommendation that an audit be conducted of the expertise required by foreign investment regulators to thoroughly assess applications. The Government rejected several recommendations in the Final Report related to enabling the publication of foreign investment applications and approvals.

Critical infrastructure protection of financial markets

The *Security Legislation Amendment (Critical Infrastructure Protection) Act 2022* (Cth) [commenced](#) on 2 April 2022, amending the *Security of Critical Infrastructure Act 2018* (Cth). The Act implements additional obligations on owners of critical infrastructure assets, particularly systems declared to be of national significance by the Minister. The Rules made under the Act, which [commenced](#) on 8 April 2022, specify asset classes to be classified as a critical infrastructure asset including critical financial market infrastructure assets that are payment systems. Following the amending Act, responsible entities for critical infrastructure assets must have and comply with a critical infrastructure risk management program and comply with enhanced cyber security obligations that relate to systems of national significance.

ASIC guidance for CCIVs

On 23 June 2022, ASIC released updated guidance for corporate collective investment vehicles (**CCIVs**) to support the licensing and other requirements of CCIVs. A CCIV is a new type of company that can be registered from 1 July 2022 following the introduction of the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* (Cth) and a new

Chapter 8B to the Corporations Act. A CCIV is a company limited by shares that has at least one sub-fund that forms all or part of the business of a CCIV.

ASIC [released](#) *Report 728: Response to submissions on CP 360 Corporate collective investment vehicles: Preparing for the commencement of the new regime*. This report highlights key issues raised by ASIC's consultation process on the development of the new CCIV regime.

ASIC also [released](#) *Information Sheet 272: How to register a corporate collective vehicle and sub-fund*. The information sheet provides information on the registration requirements for CCIVs and their sub-funds, how ASIC will assess applications for registration, requirements of the constitution of CCIVs, and the application process for registering further sub-funds.

FINANCIAL PRODUCTS

Dollar disclosure relief for litigation funding schemes extended

On 19 April 2022, ASIC [announced](#) an extension for relief from certain dollar disclosures in product disclosure statements for litigation funding schemes. From 22 August 2020, operators of litigation funding schemes generally need to hold an AFS licence, and litigation funding schemes are generally subject to the managed investment scheme under the Corporations Act.

On 28 August 2020, ASIC granted some relief for responsible entities of registered litigation funding schemes from the requirement to disclose sensitive information in dollar terms. The relief has been extended until 1 October 2026. The rationale for the relief is that, in the context of litigation, public disclosure of some categories of information could provide a tactical advantage to opposing parties in class actions and could be against the best interests of scheme members.

Proposal to extend binary options product intervention order

Binary options are over-the-counter derivatives which enables consumers to speculate on whether or not an event will occur within a specified timeframe. From 3 May 2021, ASIC banned the sale of binary options to retail clients after finding that binary options were likely to have a detrimental impact on retail clients. This product intervention order will expire on 7 October 2022.

On 26 May 2022, ASIC [released](#) a Consultation Paper 362 *Extension of the binary options product intervention order (CP 362)*. In CP 362, ASIC outlines its proposal to extend its product intervention order banning the issuing and distribution of binary options to retail clients until 1 October 2031. Submissions closed on 20 June 2022.

FINANCIAL SERVICES

Revisions to reporting standards AFS licensees

On 3 June 2022, ASIC [announced](#) new financial reporting requirements for AFS licensees. Under these standards, AFS licensees' financial reports are required to contain disclosures consistent with the financial reports of other for-profit entities, as prepared under standards set by the Australian Accounting Standards Board.

For financial years commencing on 1 July 2021, for-profit companies, registered schemes, and disclosing entities which prepare financial reports under Chapter 2M of the Corporations Act that are not reporting entities will no longer be permitted to prepare special purpose financial reports that do not contain all disclosures required in the full accounting standards. However, accounting standards allow entities that do not have public accountability to follow simpler disclosure requirements.

Relief on financial services disclosure requirements remade

On 14 June 2022, ASIC [announced](#) that it had remade relief related to product disclosure statements (**PDSs**), superannuation dashboards, and financial services guides (**FSGs**). The legislative instruments providing for this relief were due to automatically repeal or cease in the next two years. ASIC remade and combined seven legislative instruments into three new legislative instruments:

- *ASIC Corporations (In-use Notices for Employer-sponsored Superannuation and Superannuation Dashboards) Instrument 2022/496* (Cth);
- *ASIC Corporations (Shorter PDS and Delivery of Accessible Financial Products Disclosure by Platform Operators and Superannuation Trustees) Instrument 2022/497* (Cth); and
- *ASIC Corporations (Financial Services Guide given in a Time Critical Situation) Instrument 2022/498*.

INSOLVENCY

Electronic document delivery

The *Bankruptcy Amendment (Service of Documents) Regulations 2022* (Cth) [commenced](#) on 6 April 2022. From this date, documents that are required or permitted to be delivered by the *Bankruptcy Act 1966* (Cth) or regulations under that Act may be given, sent to, or served on a person electronically without the need for prior consent from the recipient of the document.

Amendments to Insolvency Practice Rules

The *Insolvency Practice (Bankruptcy) Amendment Rules 2022* (Cth) commenced on 5 July 2022. The legislation [introduced](#) a number of consequential amendments to the *Insolvency Practice Rules (Bankruptcy) 2016* (Cth) (**Insolvency Practice Rules**). The amendments make trustee registration requirements more flexible, introduce changes to requirements related to creditor meetings, and ensure that the Insolvency Practice Rules are consistent with similar provisions in the *Insolvency Practice Rules (Corporations) 2016* (Cth).

INSURANCE

ASIC reduces regulatory burden for claims handling staff

On 17 June 2022, ASIC [issued](#) relief in the *ASIC Corporations (Notification of Authorised Representatives) Instrument 2022/301* (Cth) to exempt authorised representatives from the requirement to notify ASIC of the sub-authorisation of employees who provide claims handling and settling services on their behalf.

New Life Insurance Code of Practice

The Financial Services Council has published a revised Life Insurance Code of Practice which will commence on 1 July 2023. A summary of the changes can be downloaded [here](#).

PAYMENTS

New Payments Platform regulations reauthorised

The New Payments Platform (**NPP**) was launched in February 2018 and is an open access system that enables Australian businesses, government agencies, and consumers to make real-time payments. On 20 April 2022, the ACCC [re-authorised](#) NPP regulations relating to the suspension and termination of NPP participants. The regulations have been re-authorised until 12 May 2027.

Updates to ePayments Code

On 2 June 2022, ASIC [published](#) the updated ePayments Code, which is effective from 2 June 2022. There have been updates to areas of the Code related to compliance monitoring and data collection, mistaken internet payments, unauthorised transactions, complaints handling, and facility expiry dates.

High value payment clearing system regulations re-authorised

The Australian Payments Network Limited (**AusPayNet**) uses its High Value Clearing System (**HVCS**) to manage the exchange of high value payments between financial institutions either for themselves or on behalf of corporate customers. The SWIFT Payment Delivery System is the mechanism by which HVCS payments are exchanged. On 14 April 2022, the ACCC [granted](#) re-authorisation to AusPayNet's HVCS regulations and procedures relating to the suspension and termination of members, the requirement that HVCS members join the Society of Worldwide Interbank Financial Transactions (**SWIFT**), and changes in the implementation of the SWIFT Payment Delivery System used in the HVCS.

AusPayNet QR code guidelines

On 17 May 2022, AusPayNet [released](#) guidelines to facilitate the use of Quick Response (**QR**) codes as a payment method. The guidelines are voluntary and were published in order to encourage consistency in the use of QR codes by financial institutions, payment service providers, merchants, and other payments industry participants. AusPayNet's release of the guidelines follows the growing use of QR codes by Australians during and following the Covid-19 pandemic.

PRIVACY AND DATA

Variation to Privacy (Credit Reporting) Code

On 10 March 2022, the Australian Information Commissioner [approved](#) several amendments to the *Privacy (Credit Reporting) Code 2014* (Cth) that reflect the new financial hardship reporting system. The amendments were created to ensure that consumers can access their credit rating for free once every 3 months and provide greater protections for consumers connected to the use of financial hardship information. The amendments came into effect on 22 April 2022 (for access to credit information) and 1 July 2022 (for financial hardship reporting).

Digital economy regulation settings

On 18 March 2022, the Federal Government [released](#) an issues paper on automated decision making and artificial intelligence (**AI**) regulation. The Government appointed a Digital Technology Taskforce to get feedback on how Australia's regulatory system can maximise opportunities to enable and better facilitate the responsible use of new technologies, with a focus on automated decision making and AI. Opportunities proposed by the issues paper include clarifying the application of existing regulations related to automated decision making and AI, ensuring current and future regulations are technology neutral, and identifying where new regulation may be required to minimise existing and emerging risks. Submissions closed on 20 May 2022.

CDR update

The *Competition and Consumer Amendment (Consumer Data Right Measures No. 1) Regulations 2022* (Cth) commenced on 2 April 2022, giving non-major ADIs an additional 3 months to implement joint account data sharing before their Consumer Data Right (**CDR**) obligations come into effect. The obligations were scheduled to commence on 1 July 2022 but will instead commence on 1 October 2022.

The ACCC has [published](#) guidance on the treatment of non-individuals and partnerships under the CDR rules.

ASIC statement of expectations on cybersecurity

In January 2022, the World Economic Forum [released](#) its *Global Risks Report 2022*, in which Australian executives named the failure of cyber security measures as the number one risk to the Australian economy. In May 2022, the Federal Court [held](#) that managing cybersecurity risks is a part of AFS licence obligations in the RI Advice case.

Following these developments, ASIC [released](#) a statement outlining its expectations for companies related to cyber security, indicating that cyber safety is a company culture matter. ASIC recommended that entities “embed a comprehensive and long-term commitment to cyber awareness and resilience within their company culture.” On the question of how this may be implemented, ASIC suggested regular and ongoing delivery of cyber-related training and education for staff, threat-response planning, and examining firms’ reliance on third-party providers, and the potential impact of cybersecurity breaches of these providers.

ASIC affirmed that it does not intend to introduce technical standards or provide expert guidance, but that it may consider enforcement action when it considers a firm has not met its cyber risk management obligations.

PRUDENTIAL

Discussion Paper on data collection

The Australian Prudential Regulation Authority (APRA) has established a five-year roadmap for changing its approach to collecting data from the over 2000 entities that it regulates. APRA [released](#) a Discussion Paper on 31 March 2022 detailing APRA’s plans to collect more data through APRA Connect, its new data collection system. APRA proposes that data that APRA Connect will collect will reduce reporting burdens on the financial services industry. Submissions closed on 24 June 2022.

Revisions to the reporting framework for ADIs

On 7 April 2022, APRA [released](#) interim reporting standards for authorised deposit-taking institutions (ADIs) connected to ADI capital adequacy and credit risk capital requirements. The updates require more detailed information related to subsidiaries and data collection to be reported. These interim reporting standards accompany prudential standards associated with ADI capital adequacy and credit risk capital [released](#) to align Australia with the international Basel III standards in November 2021. Submissions closed on 7 June 2022.

Amendments to credit risk framework

On 14 June 2022, APRA [announced](#) the finalised amendments to its prudential framework to give effect to macroprudential policy measures in a letter to ADIs. From 1 September 2022, ADIs will be required to meet updated standards [contained](#) in the newly released *Prudential Standard APS 220 Credit Risk Management Attachment C – Macroprudential: credit measures (APS 220 Attachment C)*. APS 220 Attachment C includes credit-based macroprudential measures that APRA could use to address financial stability. APRA may require ADIs to publicly disclose their level of lending against any limits specified by APRA.

Preparing for zero or negative interest rates

On 2 May 2022, APRA [released](#) a letter to ADIs on operational preparedness for zero and negative interest rates. Having considered feedback from ADIs about deadlines set for meeting APRA’s expectations, APRA has announced that it is reviewing its broader strategic approach

and that the previously advised deadline of 31 July 2022 is no longer relevant.

Update on aggregate Committed Liquidity Facility

APRA requires banks to hold a minimum number of liquid assets, known as the Liquidity Coverage Ratio. In September 2021, APRA announced that it expects locally-incorporated ADIs subject to the Liquidity Coverage Ratio to reduce their reliance on the Committed Liquidity Facility, which allows certain ADIs to use a contractual liquidity commitment from the Reserve Bank to meet the Liquidity Coverage Ratio. APRA announced that it expects ADIs to reduce their reliance on the Committed Liquidity Facility to zero by the end of 2022.

On 9 May 2022, APRA [issued](#) a letter to ADIs announcing that the Committed Liquidity Facility had reduced to \$66 billion on 9 May 2022 from approximately \$102 billion on 1 January 2022.

APRA expectations and policy roadmap for crypto-assets

On 21 April 2022, APRA [released](#) a letter detailing its initial risk management expectations and a policy roadmap for all regulated entities that engage in activities related to crypto-assets. Crypto-assets include assets like cryptocurrencies such as Bitcoin and non-fungible tokens. The rapid growth in the use of crypto-assets and distributed-ledger technology raises risks related to fraud, technology, and anti-money laundering and counter-terrorism financing (AML/CTF). APRA's letter outlines its expectation that all regulated entities will conduct appropriate due diligence and complete risk assessments, consider relevant prudential standards, and apply robust risk management controls when dealing with crypto-assets.

As part of APRA's policy roadmap, APRA plans to consult on the regulation of crypto-activities and prudential standards related to the operational risk of conducting business related to crypto-assets, and consider approaches to the regulation of payment stablecoins.

APRA releases FAQs on residential mortgage loans

On 24 June 2022, APRA [released](#) frequently asked questions (FAQs) on the prudential treatment of loans issued under the Federal Government's Family Home Guarantee and First Home Guarantee (formerly First Home Loan Deposit Scheme) programs.

APRA releases FAQs on Financial Claims Scheme

On 28 April 2022, APRA [published](#) an updated set of FAQs related to the Financial Claims Scheme for general insurance.

Cyclone related flood damage reinsurance pool

In May 2021, the Federal Government announced its decision to establish a reinsurance pool to cover the risk of property damage caused by cyclone and cyclone-related flood damage. This pool commenced on 1 July 2022 and will be run by the Australian Reinsurance Pool Corporation (ARPC). In light of this decision, in April 2022 APRA announced its intention to allow insurers to recognise the risk transfer provided by this reinsurance pool.

On 29 June 2022, APRA [released](#) its finalised amendments to the prudential framework for general insurers to support the introduction of the reinsurance pool. APRA has modified general insurance reporting standards to clarify that reinsurance recoverables are not subject to a capital charge. APRA has also extended the definition of an "APRA authorised reinsurer" to include the ARPC.

SUPERANNUATION

Investment switching prompts stronger governance practices

In October 2021, ASIC [revealed](#) that its surveillance of the superannuation industry found significant deficiencies in conflicts management arrangements relating to investment switching. ASIC expected to find strong systems in place that would prevent directors and senior executives from potentially misusing price sensitive information for their personal gain, but this was not the case.

On 6 April 2022, ASIC [announced](#) that its surveillance led to superannuation trustees committing to implementing a range of changes to manage conflicts of interest more effectively. These tactics include expanding conflicts arrangements to cover trading by related parties of directors, increasing board-level engagement so there is greater board oversight, input, and direction, and increasing staff awareness of policies and their obligations through more internal communication and training.

Retirement income covenant

On 7 March 2022, APRA and ASIC [published](#) a letter to Registrable Superannuation Entities (RSEs) on the implementation of the retirement income covenant. The retirement income covenant requires trustees of RSE licensees to create a retirement income strategy for their beneficiaries, balancing the following objectives:

- maximising expected retirement income over the period of retirement;
- managing expected risks to the sustainability and stability of retirement income; and
- having flexible access to expected funds over the period of retirement.

The retirement income covenant came into effect from 1 July 2022.

On 1 June 2022, APRA and ASIC [released](#) a new set of FAQs on the implementation of the retirement income covenant. The FAQs were released to assist RSE licensees with the development of their retirement income strategies.

Avoiding greenwashing for superannuation and managed funds

On 14 June 2022, ASIC [released](#) an information sheet to help issuers to avoid greenwashing when making representations about superannuation and managed funds. ASIC describes greenwashing as “the practice of misrepresenting the extent to which a financial product or investment strategy is environmentally friendly, sustainable or ethical.” ASIC’s information sheet urges issuers in their disclosure and promotions to use clear labels, define the sustainability terminology they use, and clearly explain what considerations are given to sustainability in their investment strategy.

Your Future, Your Super

On 15 June 2022, APRA [released](#) updated FAQs to RSE licensees on the Federal Government’s Your Future, Your Super reforms. The Your Future, Your Super reforms came into effect on 1 July 2021 with the aim of improving efficiency and accountability within the superannuation sector. Under the reforms, APRA is required to conduct an annual performance test for MySuper Products in order to hold RSE licensees to account for underperformance through increased transparency.

The new FAQs provide deadlines for the submission of data used in APRA’s performance test and outline APRA’s approach for assessing the performance history of MySuper products authorised under a material goodwill authorisation. The FAQs explain that where products fail the performance test in 2 consecutive years, the RSE licensee will be prohibited from accepting

new beneficiaries into that product.

On 24 June 2022, ASIC [released](#) the findings from its review of superannuation trustees' communications with their members after the first annual performance test for MySuper products was conducted. ASIC's review found that trustees whose products failed generally complied with legal obligations to notify their members of that failure. However, the communication strategies opted for by some trustees, such as publishing the findings on a webpage less likely to be visited by persons interested in the products, risked misleading fund members.

AML/CTF

Adequacy of Australia's AML/CTF Regime Report

On 30 March 2022, the Senate Legal and Constitutional Affairs References Committee [released](#) a report into the adequacy and efficacy of Australia's AML/CTF regime. The report recommends that the Commonwealth Government:

- accelerate its consultation with stakeholders in line with the Financial Action Task Force (FATF) recommendations;
- consult on areas such as the impact of regulatory burdens on small businesses, where technological innovation could streamline regulatory processes and lower costs, and existing regulatory and professional obligations on companies;
- seek advice as to whether section 242 of the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) should be amended to ensure the proper operation of legal professional privilege; and
- pursue a beneficial ownership register.

New AUSTRAC guidance

On 11 April 2022, the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) released new guidance relating to preventing financial crime. AUSTRAC [released](#) guidance on detecting and preventing financial activity related to sexual servitude. AUSTRAC also [published](#) information on mitigating and managing money laundering and terrorism financing risks arising from pubs and clubs that use electronic gaming machines, and [released](#) guidance on how to how to select an appropriate AML/CTF advisor.

AUSTRAC targeting ransomware and digital currencies

On 21 April 2022, AUSTRAC [released](#) new financial crime guidelines to help businesses stop ransomware attack payments and the criminal use of digital currencies. According to the Australian Cyber Security Centre, ransomware attacks reporting in the 2020-2021 financial year increased by nearly 15% from the previous year. As digital currencies are increasingly being used, criminals are also increasingly using digital currencies to commit crimes. AUSTRAC's guidelines include information about understanding, identifying, and reporting suspicious activities which could be related to ransomware payments and criminal activity through digital currencies.

Amendments to AML/CTF Rules for registration and customer identification

The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2022 (No. 1)* (Cth) was [registered](#) on 28 April 2022, introducing Chapter 81 and amending Chapter 10 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) (**AML/CTF Rules**).

The amendment to Chapter 10 commenced on 2 May 2022. Reporting entities that initiate providing online gambling services to a customer on or after that date must carry out applicable

customer identification procedures in relation to the online gambling account within 72 hours. Before the amendment, this period was 14 days.

Chapter 81 was introduced into the AML/CTF Rules to exempt financial institutions enrolled on the Reporting Entities Roll from registering on the Digital Currency Exchange Register from 1 May 2022.

Report on the State of Effectiveness and Compliance with FATF Standards

The FATF [released](#) the *Report on the State of Effectiveness and Compliance with the FATF Standards* in April 2022. The report provides a comprehensive overview of global efforts to tackle money laundering and terrorist and proliferation financing. The report indicates countries have made notable progress in improving compliance with AML/CTF standards by establishing and enacting on a broad range of laws. However, the report found that countries face challenges in investigating and prosecuting high-profile cross-border cases and preventing anonymous shell companies and trusts being used for illegal purposes.

Amendments for cross-border movements

The *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* (Cth) [commenced](#) on 18 June 2022. Cross-border movements of monetary instruments, for example cash or traveller's cheques, with a value of over \$10,000 must now be reported to AUSTRAC, a customs officer or a police officer. Amendments to the AML/CTF Rules commenced on 18 June 2022 to facilitate the changes made in the AML/CTF Act. The rules amendments repeal Chapters 24, 25, and 26 in the AML/CTF Rules, introduce a new Chapter 24, and amend Chapter 34.

The new Chapter 24 in the AML/CTF Rules explains information that needs to be included in a report about the movement of a monetary instrument into or out of Australia submitted by the person moving the monetary instrument (i.e. the traveller) or submitted by the person receiving the monetary instrument, and when those reports should be given. Chapter 34 was amended to explicitly cover reports for cash, traveller's cheques, cheques, money orders, and other bearer negotiable instruments.

DISPUTES AND ENFORCEMENT

AFCA response to independent review

In 2021, the Australian Financial Complaints Authority (AFCA) took part in an independent review of its functions. The Final Report was [released](#) in November 2021. On 29 April 2022, AFCA announced that it had commenced working on 9 of the 14 recommendations in the Final Report. Specifically AFCA has commenced:

- ensuring all AFCA decisions consider what is fair in all circumstances;
- not advocating or acting in a manner that compromises impartiality;
- addressing poor conduct;
- improving transparency of timeliness;
- addressing complaints from sophisticated or professional investors;
- ensuring its funding model does not disincentivise firms from defending complaints;
- improving transparency of AFCA fees;
- addressing systemic issues that have been referred to regulators; and
- improving transparency of systemic issues in public reporting.

AFCA has also indicated that it will address all 14 recommendations over the following 3 years. APRA has [published](#) a website that provides updated information on how it is addressing the recommendations in the Final Report.

AFCA Fairness Project outcomes

AFCA started its Fairness Project in 2019 with the aim of providing greater certainty and clarity about how AFCA assesses what is fair. On 11 May 2022, AFCA [published](#) the *Report on outcomes: Fairness Jurisdiction Project*, following the conclusion of the project. The report outlines AFCA's decision to establish a new Fairness Jurisdiction Tool to help AFCA discuss important issues with relevant parties, new decision templates to explain how AFCA has applied fairness tests, and new processes to calculate and measure fair outcomes. AFCA has also committed to developing a new apprehended bias policy to ensure AFCA's representatives remain impartial, the AFCA Engagement Charter to set out expectations for parties, and a revised AFCA Approach library to provide easily understandable information on how complaints are handled.

AFCA new funding model

On 31 May 2022, AFCA [released](#) details of its new funding model. AFCA engaged PricewaterhouseCoopers to assist with industry consultation and the development of the new model. Under the new model, all financial firm members will pay an annual registration fee and authorised/credit representative members will pay a lower annual registration fee. This fee is consistent amongst members and does not differ based on the industry or business size of the members, so that members with low complaint levels are not penalised. To support this, members will not have to pay complaint fees for the first five complaints made during a financial year. AFCA has also introduced a simplified complaint fee structure, with reduced registration and referral fees.

Firms with a user charge over a certain threshold will be given the option to be progressively invoiced for these fees. AFCA also encourages firms to use internal dispute resolution mechanisms to limit complaints made to the regulatory body and fees to be paid to AFCA.

The new funding model began on 1 July 2022 and applies to all complaints closed from that date, regardless of when they were received.

Westpac fined \$113 million for compliance failures

On 22 April 2022, Justice Beach of the Federal Court of Australia [delivered](#) the last decision for 6 separate civil penalty proceedings filed by ASIC. The 6 matters concerned insurance, debt onsale, deregistered company accounts, inadequate fee disclosure, general insurance, and charging fees to deceased customers. The decision on 22 April 2022 requires the bank to pay \$40 million for charging over \$10.9 million in advice fees to over 11,800 deceased customers over a 10 year period for financial advice services that were not provided. Westpac has been required to pay \$113 million in total for breaches related to the 6 proceedings.

Lightspeed Finance fined for failure to give effect to AFCA determination

On 4 May 2022, the Federal Court [ordered](#) Lightspeed Finance Pty Ltd and its director mark James Fitzpatrick to pay a total of \$220,000 for failing to give effect to an AFCA determination. The amount includes \$150,000 in compensation to a customer as well as a fine and payment of ASIC's costs.

Managing cybersecurity risks now part of AFS licence obligations

RI Advice Group Pty Ltd (**RI Advice**) holds an AFS licence and provides financial services under a third-party business owner model with its authorised representatives providing financial services to retail clients. Between June 2014 and May 2020 a significant number of cyber incidents occurred at authorised representatives of RI Advice, potentially compromising the confidential and sensitive personal information of several thousand clients and other persons.

On 5 May 2022, the Federal Court [found](#) that RI Advice breached obligations under its AFS licence to act efficiently and fairly when it failed to have adequate risk management systems in place to manage cybersecurity risks. This case is the first to find that a failure to adequately manage cybersecurity risks constitutes a breach of general AFS licence obligations.

ASIC sues ANZ for misleading conduct

On 30 May 2022, ASIC [commenced](#) proceedings in the Federal Court against Australia and New Zealand Banking Group Ltd (**ANZ**). ASIC alleges that between May 2016 and November 2018, over 165,000 customers were charged cash advance fees and interest for withdrawing or transferring money from their credit card accounts based on an incorrect account balance that ANZ displayed across the ANZ website, the ANZ app, and at ATMs. ANZ has currently given over \$10 million to customers that were affected by ANZ's conduct up until 17 November 2018. ASIC alleges that ANZ has been aware of the overcharging since at least 2018 and claims that the problem is still occurring today.

Mastercard in court over competition concerns

On 30 May 2022, the ACCC [commenced](#) action against Mastercard Asia/Pacific Pty Ltd and Mastercard Asia/Pacific (Australia) Pty Ltd (**Mastercard**). The ACCC alleges that Mastercard engaged in conduct with the purpose of substantially lessening competition related to the supply of credit card and debit card acceptance services. The least cost routing initiative of the Reserve Bank of Australia (**RBA**) aims to increase competition in the supply of debit card acceptance services by allowing businesses to choose whether transactions are processed by Visa, Mastercard or eftpos. In response to the RBA's initiative, Mastercard gave major retail clients discounted rates for credit card transactions, provided that they processed most of their Mastercard-eftpos debit card transactions through Mastercard rather than eftpos, even though eftpos was often the cheapest option.

Sunshine Loans sued for charging prohibited fees

On 7 June 2022, ASIC [announced](#) that it had commenced proceedings against Sunshine Loans Pty Ltd (**Sunshine Loans**). Sunshine Loans is an online only business and offers its customers small amount credit contracts of up to \$2000. ASIC alleges that Sunshine Loans collected over \$320,000 in fees that it was prohibited from charging under the National Credit Code.

Allianz and AWP false or misleading statements about travel insurance

On 14 June 2022, Allianz Australia Insurance Limited (**Allianz**) [pleaded](#) guilty to six criminal charges and AWP Australia Pty Ltd (**AWP**) pleaded guilty to one criminal charge of making false or misleading statements. AWP marketed, sold, and managed several travel insurance products on behalf of Allianz, the insurer. Between 2016 and 2018, Allianz and AWP misrepresented characteristics of travel insurance sold or misrepresented the level of coverage of travel insurance available on Allianz's website and those of its distribution partners, including Expedia.

Rent4Keeps and Layaway Depot sued for breaching Credit Act

On 12 April 2022, ASIC [announced](#) action against Darranda Pty Ltd (which trades as Rent4Keeps) and Layaway Depot Pty Ltd for breaching various consumer protections under the National Credit Act.

Rent4Keeps specialises in the rental of home appliances and furniture. Layaway Depot specialises in creating payment plans so that people can pay for furniture over several weeks instead of paying full price up front. ASIC alleges that customers of Rent4Keeps and Layaway Depot are often on low incomes or Centrelink benefits.

ASIC claims that Rent4Keeps entered into over 500 agreements that the company referred to

as leases in a three month period. ASIC alleges that Layaway Depot entered into 70 deferred payment agreements over a 14 month period. ASIC claims that these contracts were arranged to deliberately avoid consumer protections under the National Credit Act, specifically the 48% annual cost rate cap that applies to credit contracts under the National Credit Act. ASIC also claims that Layaway Depot was engaged in unlicensed credit activity.

NAB enforceable undertaking

As a result of compliance assessments conducted by AUSTRAC and disclosures made by National Australia Bank Limited (**NAB**), AUSTRAC identified that NAB was not complying with Australia's AML/CTF laws. NAB was notified of AUSTRAC's investigation into five of its reporting entities in June 2021.

On 2 May 2022, AUSTRAC [announced](#) that it had accepted an enforceable undertaking from NAB. NAB has undertaken to improve its systems, controls and record-keeping, applicable customer identification procedures, customer risk assessment, due diligence, transaction monitoring, governance, and assurance in order to comply with AML/CTF requirements.

BHF and Cigno engaged in credit actions without a credit licence

ASIC commenced proceedings against BHF Solutions Pty Ltd (**BHF**) and Cigno Pty Ltd (**Cigno**) in September 2020. ASIC alleged that BHF and Cigno contravened the National Credit Act by engaging in credit activities without a credit licence.

BHF and Cigno developed lending arrangements with consumers under which BHF advanced personal loans to consumers and Cigno marketed, facilitated, managed and arranged collections. BHF charged a fee under the credit contract to consumers and Cigno charged separate fees, including a 'Financial Supply Fee' for the provision of credit. These combined fees exceeded the maximum charge allowed to be exempt from holding a credit licence under the National Credit Act.

On 27 June 2022, the Full Court of the Federal Court of Australia [reversed](#) the previous finding of Halley J of the Federal Court by finding that the fees were a charge for providing the credit. Lee J confirmed that the primary judge had erred in concluding that this phrase reflected a charge "imposed solely for the purpose of, or solely in exchange for, the deferment of an existing debt or the creation of a new deferred debt." The Court found that the credit legislation must be interpreted in a way which looks to the substance of the credit arrangements rather than their contractual form and ensures that the remedial provisions of the Code are not easily avoided by carefully structured credit arrangements.

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