



DWYER HARRIS



FINANCIAL SERVICES AND CREDIT

QUARTERLY UPDATE

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Dwyer Harris Pty Ltd ABN 56 159 256 121 www.dwyerharris.com

Suite 602, 161 Walker St, North Sydney NSW 2060 Australia

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CONSUMER CREDIT

Regulation of Buy Now, Pay Later

The Federal Government [announced](#) on 22 May 2023 that Buy Now, Pay Later (**BNPL**) products will become regulated as credit products. The announcement follows the [consultation](#) released by the Federal Government on 21 November 2022. In the consultation, views were sought on three options to regulate the BNPL sector:

- strengthen the BNPL Industry Code and add an affordability test to address concerns relating to consumer protection;
- limited BNPL regulation under the *National Consumer Credit Protection Act 2009* (Cth) (the **NCCP Act**), to include licensing and scalable unsuitability tests; or
- fully regulate BNPL under the NCCP Act.

The Government has selected the second option. Once implemented this will mean that BNPL providers will be required to:

- hold an Australian Credit Licence;
- comply with responsible lending obligations;
- meet statutory dispute resolution and hardship requirements;
- comply with statutory product disclosure and other information obligations;
- abide by restrictions on unacceptable marketing; and
- meet a range of other minimum standards in relation to their conduct, and in relation to their products.

The extent of the limited NCCP Act regulation under the second option has yet to be finalised.

Draft legislation is expected to be released for consultation later this year, and the Government plans to introduce the final Bill into Parliament by the end of 2023.

Small amount credit contract (SACC) and consumer leasing reforms

Amendments to the NCCP Act relating to SACCs and consumer leasing commenced on 12 June 2023. The changes include:

- imposing a cap on the total payments that can be made under a consumer lease;
- requiring SACCs to have equal repayments and payment intervals;
- removing the ability for SACC providers to charge monthly fees relating to the residual term of a loan where a consumer fully repays early;
- preventing lessors and credit assistance providers from undertaking door-to-door selling of consumer leases at residential homes;
- anti-avoidance provisions; and
- increasing penalties.

Regulations in support of the changes, the *National Consumer Credit Protection Amendment (Financial Sector Reform) Regulations 2023* (Cth) were made on 11 May 2023. The regulations include:

- adding an additional requirement that licensees verify the financial situation of consumers before entering into a contract with them;
- consumer income requirements for both SACCs and consumer leases for household goods;
- anti-avoidance measures targeted at avoidance purposes relating to credit contracts and product intervention orders;
- the prescription of new civil penalties subject to the infringement notice regime;
- disclosure of information requirements for consumer leases for household goods; and

- the calculation method for the base price of goods hired under a consumer lease.

Proposed ban on use of credit cards for online betting

The Federal Minister for Communications [announced](#) on 28 April 2023 that the Federal Government plans to ban the use of credit cards for online wagering and betting. The ban would bring online betting into line with land-based gambling, where credit cards already cannot be used. The Government will consult with stakeholders on draft legislation and the technical implications. Lottery services will be excluded from the ban.

CONSUMER PROTECTION

ACCC consultation on competition and consumer issues

The Australian Competition and Consumer Commission (**ACCC**) has [opened](#) a consultation on competition and consumer issues affecting retail deposit products. The consultation follows the release of an issues paper in April 2023 in which the ACCC sought feedback on:

- how banks and other authorised deposit-taking institutions set their rates on retail deposit products;
- how their approaches differ from rate setting for credit products such as home loans;
- the role of deposits in their overall funding mix; and
- consumer information and switching.

The ACCC aims to consult closely with financial regulators, including the Reserve Bank of Australia (**RBA**), the Australian Prudential Regulation Authority (**APRA**) and the Australian Securities and Investments Commission (**ASIC**) as part of the inquiry.

National Anti-Scam Centre

The National Anti-Scam Centre (**NASC**) commenced on 1 July 2023. Funding of the NASC was announced in the May Federal Budget. The funding will be used to build technology to support high frequency data sharing with a range of agencies, law enforcement and the private sector.

In related news, on 3 July 2023, ASIC and the ACCC [announced](#) that the NASC would be coordinating a “fusion cell” to address the problem of investment scams.

Banking outcomes for indigenous customers

Following a review of target market determinations (**TMDs**) for basic bank accounts and customer data supplied by the account providers, ASIC has [found](#) that many indigenous customers were in high fee accounts despite being eligible for lower fee accounts. ASIC wants banks to migrate eligible customers to low-fee accounts, remove fees for new and existing customers, improve TMDs and account opening procedures, remediate impacted customers, and make procedural changes to tailored indigenous services.

DIGITAL ASSETS

IOSCO consultation on regulation of crypto assets

The International Organisation of Securities Commissions (**IOSCO**) [published](#) a Consultation Report on the regulation of crypto assets on 23 May 2023. IOSCO aims to finalise the policy recommendations in early October. The IOSCO recommendations may be relevant to the Federal Government’s consideration of how to regulate crypto assets in Australia.

ESG

Second round of consultation on climate-related financial disclosure

The Federal Government [released](#) its second Climate-Related Financial Disclosure Consultation Paper on 27 June 2023. The Government is seeking views on proposed positions for the detailed implementation and sequencing of standardised, internationally-aligned requirements for disclosing climate-related financial risks and opportunities in Australia, and in particular, whether the proposed positions relating to coverage, content, framework and liability are workable. Submissions are due by 21 July 2023.

The paper proposes that there would be mandatory climate-related financial disclosure for all entities that meet prescribed size thresholds or if they are entities required to lodge financial reports under Chapter 2M of the *Corporations Act 2001* (Cth) (the **Corporations Act**) and which are registered as a 'Controlling Corporation' reporting under the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Reporting Entities**). The requirements would be phased in over time, depending on the entity size (based on number of employees, gross assets, and revenues). For example, "Group 1" entities would be NGER Reporting Entities or those which meet any two of the following three criteria: over 500 employees, gross assets of \$1 billion or more, or consolidated revenue of \$500 million or more. Group 1 entities would have to comply from the 2024-25 financial year.

Additionally, the paper sets out what it expects the required disclosures will include. However, the actual disclosure standards are to be developed by the Australian Accounting Standards Board.

Also covered in the paper are proposals for where reporting would be published (in annual reports), continuous disclosure obligations, and assurance requirements (which would be phased in).

FINANCIAL ADVICE

Federal Government response to the Quality of Advice Review

The Federal Government [responded](#) to the [Quality of Advice Review](#) on 13 June 2023 as part of its Delivering Better Financial Outcomes package. There are three streams in the package: removing regulatory red tape that adds to the cost of advice without benefiting consumers; expanding access to retirement income advice; and exploring new channels for advice. The Government intends to consult on the three streams over the coming months and expects to issue its final response on the Delivering Better Financial Outcomes package later in 2023.

Some of the key recommendations of the Quality of Advice Review which the Government has agreed to adopt include:

- removing the safe harbour steps from the best interests duty;
- streamlining ongoing fee renewal and consent requirements;
- replacing statements of advice with an advice record;
- standardised consumer consent requirements to classify a consumer as a wholesale or sophisticated client;
- simplifying and removing some exemptions to the ban on conflicted remuneration;
- standardised consumer consent requirements for certain insurance commissions;
- allowing superannuation funds to provide more retirement advice and information; and
- consulting on the broadening of the definition of personal advice, removing the general advice warning, introducing a good advice duty, and amending the design and distribution obligations.

Draft legislation to amend education requirements for financial advisers

The Federal Government has [released](#) an exposure draft Bill and explanatory memorandum that would amend the education requirements for financial advisers. The changes would mean an adviser has met the education requirements if they have 10 years (cumulative) experience providing advice between 1 January 2007 and 31 December 2021, and have not recorded any disciplinary action on the Financial Advisers Register before 31 December 2021.

The changes would still require advisers to pass the exam. The proposed amendments address cases where would-be advisers currently fail to meet the educational standards for technical reasons. The consultation was open for feedback between 18 April 2023 and 3 May 2023.

Adviser registration deadline extended

ASIC has [extended](#) the date by which financial advisers must be registered to 1 October 2023. It is believed a further delay to the registration requirement will allow for:

- Parliament to consider the improvements proposed by the *Treasury Laws Amendment (2023 Measures No. 1) Bill 2023*;
- ASIC to assist the financial advice industry to understand and comply with the registration requirements by issuing regulatory guidance and conducting webinars; and
- financial services licensees to understand the registration requirement and to make necessary applications to register their relevant providers.

FINANCIAL MARKETS

ASIC calls for improvement on DDO

ASIC has [called](#) on investment product issuers to lift their game after conducting an initial review of their compliance with the design and distribution obligations (**DDO**). The findings of ASIC's review are detailed in its report [REP 762](#) *Design and distribution obligations: Investment products* and include the following problems:

- defining a target market too broadly;
- inappropriate risk profiles being used in the target market;
- including inappropriate levels of portfolio allocation in a target market;
- inappropriate intended investment timeframe and/or withdrawal needs in the target market;
- inappropriate or no distribution conditions; and
- inappropriate use of a TMD.

As of 3 May 2023, ASIC has placed interim DDO stop orders on 26 investment products. In 22 of these cases, the stop order was revoked after a revised TMD was provided, and five issuers of investment products withdrew their products. ASIC has also commenced civil penalty proceedings for alleged breaches of the DDO against two businesses.

FINANCIAL SERVICES

ASIC guidance on reportable situations

On 27 April 2023, ASIC [released](#) an updated *Regulatory Guide 78: Breach reporting by AFS licensees and credit licensees (RG 78)*. The updates clarify aspects of the existing guidance and provide new guidance in response to operational issues that have arisen since the implementation of the regime on 1 October 2021.

The updates include:

- clarifying the circumstances in which licensees may group multiple reportable situations into one report to ASIC;
- new guidance on the information to include when licensees describe a reportable situation; and
- new guidance for licensees on ASIC's expectations when licensees are providing updates related to a reported breach.

The guidance also includes a minor change to the prescribed form for lodging reportable situations.

ASIC proposes remaking 'sunsetting' class orders on unit pricing discretions

On 8 June 2023, ASIC [released](#) proposals to remake managed investment scheme unit pricing orders that are due sunset on 1 October 2023. ASIC believes that the class orders are currently operating effectively and efficiently and proposes to remake the class orders in a combined legislative instrument in substantially the same form for 5 years.

Report on bank management of deceased estates released

The Banking Code Compliance Committee (**BCCC**) has [released](#) a report on the practices of six banks in managing estates of deceased customers. It provides an analysis of compliance with Chapter 45 of the Banking Code of Practice (the **Code**). Chapter 45 contains obligations for dealing with a deceased customer's accounts and the representatives who need to manage them. The report also contains examples from banks of good practices and performance. The report makes nine recommendations that banks must consider and, where necessary, implement for compliance with the Code. These include a recommendation that a bank ensure front-line staff and members of any deceased estates team are trained to communicate with the sensitivity, respect and compassion required for representatives of deceased customers.

FINANCIAL SYSTEM

RBA review response

The Treasurer [released](#) the Review of the RBA on 20 April 2023. The Treasurer said that the Federal Government was committed to working with the RBA, the Council of Financial Regulators, and other stakeholders to implement the recommendations. He announced that, subject to consultations with the Opposition, the Government intends to introduce legislation to:

- reinforce the independence of the RBA in the operation of monetary policy;
- strengthen the RBA's mandate and clarify that Australia's monetary policy framework will have dual objectives of price stability and full employment; and
- establish a separate Monetary Policy Board and Governance Board to ensure decision making and corporate governance arrangements are as effective as they can be.

The Treasurer will work with the RBA Board to agree a new Statement on the Conduct of Monetary Policy to be finalised before the end of 2023.

Review of the ASIC Industry Funding Model

The Federal Government [released](#) the final report on the Review of the ASIC Industry Funding Model (**IFM**) on 26 June 2023 and agreed to the Review's recommendations. The IFM determines which costs incurred by ASIC are recovered from regulated sub-sectors.

ABA's new Bank Branch Support Closure Protocol

The ABA has [released](#) a new Branch Closure Support Protocol to improve transparency, ensure better communication, and provide improved customer support when banks close branches. The Protocol details the steps that banks must follow when closing branches. It implements the recommendations of the Federal Government Regional Banking Taskforce inquiry into branch closures. The new Protocol came into effect on 1 July 2023. It includes a new Customer Care Standard, and customer support obligations will now apply when a branch closes and the distance to the next branch is 10km or more (it was previously 20km).

Response to CFR report on debanking

Following advice from the Council of Financial Regulators in 2022 on potential policy responses to the problem of debanking, the Federal Government [released](#) its response on 28 June 2023.

The Government agrees with the recommendation that voluntary data collection on debanking be undertaken by the four major banks. It also supports in principle the recommendation that all banks implement five related measures to improve transparency and fairness in relation to debanking. The measures include documenting the reasons for debanking a customer and providing a customer with those reasons, ensuring that the bank customer who is an individual or small business has access to their internal dispute resolution procedure, and providing a minimum of 30 days' notice before closing existing core banking services of a customer.

The Government also supports in principle the recommendation that the four major banks publish guidance applicable to the digital currency exchanges, fintech and remittance sectors concerning their risk tolerance and requirements to bank these sectors. It noted the recommendation that consideration be given to targeted education, outreach and guidance to those sectors.

INSURANCE

APRA consultation to minor amendments on finalised capital and reporting framework

APRA [released](#) for consultation minor amendments to the final reporting standards impacted by the introduction of updates to the Australian Accounting Standards Board 17 Insurance Contracts, Life and General Insurance Capital standard, and revisions to the capital framework for private health insurers. The consultation concerned minor corrections and improvements to the general, life and private health insurance reporting standards.

ASIC relief for insurers on transaction confirmation requirements

ASIC has [granted](#) relief to life and general insurers by providing modifications and exemptions from the confirmation of transaction requirements in the Corporations Act. The relief is set to expire on 1 July 2028.

PAYMENTS

Payment systems reform

On 7 June 2023 the Federal Government [released](#) a strategic plan for Australia's payment system, together with a [consultation paper](#) on reforms to the *Payment Systems (Regulation) Act 2023 (Cth)* (the **PSRA**) and another [consultation paper](#) on defining payment functions for the new payments licensing regime.

The strategic plan has five elements:

- promoting a safe and resilient system which includes reducing scams and fraud and strengthening defences against cyber-attacks as well as systematic supervision of payment systems;
- updating the payments regulatory framework by implementing changes to the PSRA and establishing a new licensing framework, promoting competition, enabling more collaboration and reducing small business transaction costs;
- modernising payments infrastructure such as phasing out cheques, upgrading systems and maintaining access to cash;
- uplifting competition, productivity and innovation by aligning payment system objectives, supporting broader use of digital ID, and building public trust through the adoption of AI; and
- paving the way for Australia to be a leader in global payments by improving the availability of fast, low-cost international transfers and piloting a central bank digital currency.

The consultation paper on changes to the PSRA includes proposals for expanding the regulatory perimeter of the PSRA by updating the definition of “payment system” and “participant”, and providing new Ministerial designation powers. The paper also flags possible reforms such as enhanced information gathering powers, introducing a power for the RBA to accept enforceable undertakings, and changes to penalties.

The consultation paper on defining payment functions includes a proposed list of payment functions divided into two broad categories, stored value facilities and payment facilitation services. In relation to stored value facilities, the payment functions would include issuing payment accounts or facilities and issuing payment stable coins. As to payment facilitation services, the consultation paper identifies the functions of:

- issuing payment instruments;
- payment initiation services;
- payment facilitation authentication, authorisation and processing services;
- payments clearing and settlement services; and
- money transfer services.

New digital platform to facilitate reporting of fraudulent payments

The Australian Banking Association (ABA) [launched](#) a new digital platform known as the Fraud Reporting Exchange (FRX) on 16 May 2023 which aims to provide a quick reporting process for fraudulent payments en route or transferred to another bank. The platform is designed to allow the reporting of a scam payment in close to real-time and boost the likelihood of funds being frozen and returned to the customer.

ePayments Code changes commence

The [updated](#) ePayments Code took effect from 2 June 2023 after a 12-month transition period. Updates to the Code deal with matters including compliance monitoring and data collection, mistaken internet payments, unauthorised transactions, and complaints handling.

PRIVACY AND DATA

New Privacy Commissioner role

On 3 May 2023, the Federal Attorney General, Mark Dreyfus KC, [announced](#) that the Government would appoint a stand-alone Privacy Commissioner to deal with the growing threats to data security and the increasing volume and complexity of privacy issues. Currently, the Australian Information Commissioner, Ms Angeline Falk, also holds the office of Privacy Commissioner, and she will continue in this role until the new Privacy Commissioner is appointed.

Federal Government response to the Statutory Review of the Consumer Data Right

The Federal Government [released](#) its statement response to the Statutory Review of the Consumer Data Right (CDR) on 7 June 2023. The response outlines its commitment to continue developing the CDR framework by;

- supporting the CDR to mature in banking and energy;
- continuing expansion of the CDR to non-bank lending;
- prioritising policy and design of action initiation;
- enhancements to cyber security; and
- helping consumers identify CDR-enabled providers, products and services.

The Government marked most of the recommendations of the review as “noted” rather than “agreed”. Included in the Government’s response was a statement that it will consult on policy options for regulating screen scraping and will release a discussion paper on this topic in the second half of 2023. The Government also stated that it was pausing implementation of the CDR across the superannuation, insurance and telecommunications sectors to allow time for the CDR to mature across the banking and energy sectors and to implement lessons learned to date.

Use of multi-factor authentication

On 26 May 2023 APRA [announced](#) that it had written to all APRA-regulated entities on the importance of using multi-factor authentication (MFA) as one of the most effective tools to prevent unauthorised access to sensitive information. In its letter, APRA laid out that it expected APRA-regulated entities to review the coverage of MFA in their operating and technology environments. Where gaps in the coverage of MFA have the potential to materially affect, financially or non-financially, the entity or the interests of depositors, policyholders, beneficiaries or other customers, APRA said that it would consider this to be a material security control weakness, and require an entity to notify APRA under paragraph 36 of Prudential Standard CPS 234 Information Security (CPS 234).

APRA cyber security assessments

APRA is conducting an independent tripartite cyber assessment of more than 300 banks, insurers and superannuation trustees to assess their compliance with prudential standard CPS 234. The purpose of the standard is to ensure that regulated entities have baseline prevention, detection and response capability to withstand cyber security threats.

On 5 July 2023, APRA [released](#) interim findings based on the first round of assessments, comprising about a quarter of APRA regulated entities. The most common control gaps identified in the assessment were: incomplete identification and classification for critical and sensitive information assets; limited assessment of third-party information security capability; inadequate definition and execution of control testing programs; incident response plans not being regularly reviewed or tested; limited internal audit review of information security controls;

and inconsistent reporting of material incidents and control weaknesses to APRA in a timely manner.

PRUDENTIAL

APRA's new timeline for operational risk standards

On 13 April 2023, APRA [released](#) an updated timeline for its new cross-industry Prudential Standard CPS 230 Operational Risk Management. APRA intends to move the effective date for the new standard to 1 July 2025. Following feedback from regulated entities and other stakeholders, APRA also intends to provide transitional arrangements for pre-existing contractual arrangements with service providers, with the requirements in the standard applying from the earlier of the next renewal date or 1 July 2026. APRA plans to release a final version of the standard with draft supporting guidance by mid-2023.

APRA sets expectations on home lending standards

On 9 June 2023, APRA [announced](#) that it had written to banks to reiterate expectations around managing exceptions to housing lending policy. APRA noted that some banks had recently changed their processes for granting exceptions to borrowers who did not meet minimum serviceability criteria, such as the 3% serviceability buffer. APRA wished to reinforce that any exceptions are used in a prudent and limited manner, so as not to undermine the intent of the core policy. Loans written as exceptions must be regularly reported to the relevant internal governance bodies of the bank and monitored against risk appetite limits.

New prudential standards for PPF providers

APRA has [released](#) its response to the consultation conducted on proposed amendments to the minimum capital requirements for purchased payment facilities (PPF) providers, and amendments were made to the Prudential Standard APS 610 Retention Requirements for Providers of Purchased Payment Facilities on 11 May 2023. The amendments are an interim measure ahead of a broader review of this prudential standard.

SUPERANNUATION

Superannuation financial reporting and audit amendments

The Federal Government has [released](#) exposure draft regulations to support changes made to Schedule 6 of the *Treasury Amendment (2022 Measures No.4) Act 2023* (Cth), which adapts and extends the financial reporting and auditing requirements in Chapter 2M of the Corporations Act to apply to registrable superannuation entities (RSEs), so that their reporting requirements will be consistent with those that apply to public companies and registered schemes.

Super trustees' performance test failure

ASIC has [conducted](#) a review of performance communications by trustees that failed the annual performance test for MySuper products in 2022. These trustees cannot accept any new members into their MySuper products. ASIC found that the trustees had made some progress, but some trustees needed to design and deliver performance communications with their current members in mind.

APRA's proposed class exemption to own or control and RSE licensee

In April 2023, APRA [released](#) for consultation a draft instrument to exempt some RSE licensee directors holding shares in the RSE licensee, which would otherwise be in contravention of the change of control and ownership provisions of the *Superannuation Industry (Supervision) Act 1993* (Cth). The consultation closed on 17 May 2023.

Federal Government to introduce payday super

The Federal Government [announced](#) on 2 May 2023 that it will require superannuation to be paid on payday. The reforms are scheduled to begin on 1 July 2026 and will require employers to pay their employees' superannuation at the same time as their salary and wages. The reforms follow findings from the Australian Taxation Office estimating that \$3.4 billion worth of super went unpaid in 2019-20.

Draft regulations on military superannuation benefits

In May 2023, the Federal Government [released](#) consultation on draft regulations which complement a Bill before the Federal Parliament seeking to address a problem raised in a recent court decision, *Commissioner of Taxation v Douglas* [2020] FCAFC 220, which found that certain invalidity pension payments for veterans and their beneficiaries are superannuation lump sums and not superannuation income streams.

Draft Bill to enable AFCA to hear more superannuation matters

The Treasury [released](#) an exposure draft Bill in May 2023 to address the findings in *MetLife v Australian Financial Complaints Authority* [2022] FCAFC 173, which held that the Australian Financial Complaints Authority (AFCA) did not have jurisdiction to hear complaints relating to superannuation unless the complaint was specifically listed in section 1053(1) of the Corporations Act.

Non-arm's length expense rules to superannuation

On 19 June 2023, the Treasury [released](#) for consultation an exposure draft Bill to enact amendments to the non-arm's length income (NALI) provisions announced in the 2023-24 Federal Budget, under which NALI provisions be applied to expenditure incurred by superannuation funds, known as the non-arm's length expense (NALE) rules. The consultation closed on 7 July 2023.

Super trustees called to appropriately deal with member money

ASIC has [called](#) on superannuation trustees to ensure they are meeting their legal obligations for dealing with incoming money from consumers if a new or increased interest in a super product cannot be issued by the next business day. This follows the findings of ASIC's review of a sample of twelve superannuation trustees.

ASIC information sheet on transparency and disclosure obligations

ASIC has [published](#) a new information sheet which consolidates super trustee transparency and disclosure obligations into one webpage with links. Information Sheet 278 outlines relevant obligations under the Corporations Act, the *Superannuation Industry (Supervision) Act 1993* (Cth) and associated regulations.

AML/CTF

Debanking guide

On 27 June 2023, the Australian Transactions Reports and Analysis Centre (AUSTRAC) [published](#) a guide on debanking or 'derisking'. The guide is designed to help financial institutions to understand the expectations of AUSTRAC when providing designated services to businesses that those financial institutions considered to be higher risk, and to encourage businesses in affected sectors to engage openly with financial institutions and demonstrate the steps they are taking to address the risks within their business.

AUSTRAC's financial crime guide on combating child exploitation

In April 2023, AUSTRAC [published](#) a new financial crime guide, developed in partnership with the Australian Federal Police and Australian Centre to Counter Child Exploitation, to help businesses identify and stop the purchase of child sexual exploitation material and report suspicious activity.

DISPUTES AND ENFORCEMENT

Compensation Scheme of Last Resort

The *Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Act 2023* (Cth) received [assent](#) on 3 July 2023 and commenced on the following day. The legislation establishes a Compensation Scheme of Last Resort which will facilitate payments of up to \$150,000 in compensation to eligible consumers who have received an AFCA determination awarding compensation in relation to complaints in one of four areas (personal financial advice, credit intermediation, securities or credit provision) and where the determination remains unpaid.

ASIC updates timeframe for IDR data reporting

ASIC has [updated](#) the timeframe for the implementation of the internal dispute resolution (IDR) data reporting framework. The updated timeframe is to ensure a smooth implementation of the reform for firms reporting their IDR data for the first time. For more information, see our recent blog article [here](#).

Information on serving legal documents on ASIC

ASIC [published](#) Information Sheet 279 (**INFO 279**) in May 2023. INFO 279 explains how to serve legal documents on ASIC. It sets out how to serve legal documents electronically; what to do if you cannot serve documents electronically; and what kinds of documents should not be served electronically. ASIC encourages the use of electronic service.

ASIC greenwashing interventions

ASIC [released](#) a short report on 10 May 2023 detailing the 35 interventions it has made in response to greenwashing surveillance. The surveillance ran from 1 July 2022 to 31 March 2023 and identified increasing levels of alleged misleading or false representations on environmental, social and governance credentials by listed companies, managed funds and superannuation funds. The 35 interventions taken by ASIC resulted in 23 corrective disclosure outcomes, 11 infringement notices, and one case of commencing civil penalty proceedings.

ASIC has also [issued](#) an infringement notice to superannuation fund promoter, Future Super Investments Services Pty Ltd (**Future Super**) for alleged greenwashing. ASIC was concerned that a Facebook post made by Future Super may have been false or misleading.

ASIC focusing on credit and debt management

ASIC [released](#) its Enforcement and Regulatory update report on 11 May 2023 for the period between 1 January and 31 March 2023. The report highlighted over \$30 million in civil penalties secured by ASIC. ASIC warned credit providers and debt management firms that it will be targeting action against predatory lending, high-cost credit and misconduct impacting consumers who are experiencing financial distress.

ASIC sues HCF Life for alleged unfair and misleading contract terms

ASIC has [commenced](#) civil proceedings in the Federal Court against HCF Life Insurance

Company Pty Limited (**HCF Life**) for three types of insurance policies allegedly containing unfair contract terms. The case involves standard form contracts that were issued under HCF Life's 'Recover' range of insurance products. ASIC alleges that the 'pre-existing condition' term in these contracts is unfair and could mislead the public. The term purports to deny coverage if a customer does not disclose a pre-existing condition before entering the contract and a medical practitioner forms an opinion that the symptoms existed prior, even if a diagnosis had not been made. ASIC says that the term suggests HCF Life can deny coverage even if the customer was not aware of the pre-existing condition. Section 47 of the *Insurance Contracts Act 1984* (Cth) prevents insurers from excluding coverage on the basis of non-disclosure of a pre-existing condition where the customer was unaware and a reasonable person could not be expected to be aware of the condition.

ASIC sues Money3 for responsible lending breaches

ASIC has [commenced](#) civil proceedings in the Federal Court against Money3 Loans Pty Ltd (**Money3**) for alleged breaches of its responsible lending obligations, relating to finance for the purchase of second-hand vehicles. ASIC alleges that between May 2019 and February 2021, Money3 failed to properly assess whether certain borrowers, which included First Nations peoples, could meet their repayment obligations before entering loan contracts for the purchase of second-hand vehicles. The relevant customers either receive or were receiving Centrelink payments as their sole income, or were on low incomes. ASIC also alleges that when approving loans, Money3 applied arbitrary expense amounts from an internal 'product guide' not based on the customer's financial situation and that these amounts were substantially lower than their reasonably necessary expenses.

Permanent injunctions ordered against social media influencer

The Federal Court has [handed](#) down permanent injunctions against social media influencer Tyson Robert Scholz which will prohibit him from carrying on a financial services business in Australia in contravention of the Corporations Act. The Court found in December 2022 that Mr Scholz had contravened the Corporations Act by carrying on a financial service business between March 2020 and November 2021 without an Australian financial services licence (**AFSL**). The Court has now permanently prohibited Mr Scholz from hosting online groups for which a membership fee is charged, and in which messages are exchanged by members about share trades, without an AFSL, and from carrying on a financial services business in Australia in contravention of section 911A of the Corporations Act.

Stop orders made against Spaceship

On 31 May 2023, ASIC [issued](#) interim stop orders on the distribution of one superannuation product and three managed funds promoted by Spaceship Capital Limited (**Spaceship**). ASIC found issue with the target markets described in the TMDs and also found that consideration of risk was not conducted properly. Following corrective action, the interim stop orders were revoked.

APRA taking action against Medibank Private

APRA [announced](#) on 27 June 2023 that it had taken action against Medibank Private following an APRA review of its major cyber incident in October 2022. APRA has imposed an increase in Medibank's capital adequacy requirement of \$250 million to reflect the weaknesses identified in Medibank's information security environment. The adjustment was effective from 1 July 2023 and will be applied to Medibank's operational risk charge under the new Private Health Insurance Capital Framework and remain in place until an agreed remediation program is completed. APRA is also set to conduct a targeted technology review focusing on governance and risk culture.

Saxo Capital Markets amends TMDs after stop orders

ASIC [issued](#) eight interim stop orders on 16 May 2023, preventing Saxo Capital Markets (Australia) Limited (**Saxo**) from issuing new contracts for difference (**CFDs**) to retail clients due to deficiencies in the TMDs for the products. The orders were revoked on 18 May 2023 when Saxo amended the TMDs to address ASIC's concerns.

MLC Life Insurance penalised \$10 million for misleading customers

MLC Limited (**MLC**) has been [ordered](#) to pay a \$10 million penalty by the Federal Court for failing to pay promised benefits, resulting from a lack of appropriate systems to administer its insurance policies. The Court also declared that MLC had contravened the *Australian Securities and Investments Commission Act 2001* (Cth), the Corporations Act and the *Insurance Contracts Act 1984* (Cth). The declarations relate to MLC failing to pay a rehabilitation benefit to 119 customers who had undertaken approved rehabilitation programs following injury and/or disability, and failing to have adequate processes to review, and where appropriate, promptly update its medical definitions for critical illness in certain policies.

AMP penalised \$24 million for charging deceased customers

The Federal Court has [found](#) that four companies that were or are part of the AMP Group breached the law and has ordered them to pay a combined penalty of \$24 million. The Court found that the companies charged life insurance premiums and advice fees from the superannuation accounts of more than 2,000 deceased customers. Both AMP Life Limited and AMP Financial Planning Proprietary Limited admitted to engaging in unconscionable conduct by deducting and/or failing to properly refund insurance premiums and advice fees respectively from superannuation members after they were notified of their deaths. Both entities also admitted to accepting insurance premiums and advice fees despite there being reasonable grounds for believing that they would not be able to supply insurance or advice.

Layaway penalised \$375,000

The Federal Court has [ordered](#) Layaway Depot Pty Ltd (**Layaway**) to pay a penalty of \$375,000 for breaches of the NCCP Act. The Court found that Layaway engaged in unlicensed credit activity and charged consumers in excess of the maximum annual cost rate of 48% in respect of 70 loans taken out by consumers to buy electronic goods including mobile phones, televisions and speakers.

Offshore company held to be subject to Privacy Act

The Administrative Appeals Tribunal (**AAT**) has [handed](#) down its decision on the conduct of Clearview AI Inc (**Clearview AI**). The decision confirms the applicability of the *Privacy Act 1988* (Cth) (**Privacy Act**) to the conduct of entities based overseas.

Clearview AI operated a facial recognition and identification platform which gathers images from the public internet and creates vectors that can be matched. The Office of the Australian Information Commissioner was concerned by the widespread collection of sensitive information about Australians without their consent. The Commissioner made orders in 2021 to Clearview AI to delete data it had collected and to stop further collection. Clearview AI sought a review of the decision by the AAT, arguing that the Privacy Act does not apply due to Clearview AI because it does not have an 'Australian link'.

The AAT decided that Clearview AI satisfied the test of an Australian link set out in section 5B of the Privacy Act. At the relevant time, this was a two-limb test which provided a foreign corporation only had an Australian link where it (1) carried on a business in Australia and (2) collected or held personal information in Australia. The second limb has since been removed by recent amendments made to the Privacy Act.

ASIC issues DDO stop order to Mitrade

ASIC [issued](#) an interim stop order to prevent Mitrade Global Pty Ltd (**Mitrade**) from opening trading accounts or dealing in CFDs or margin foreign exchange contracts to retail investors. The action was in response to concerns that Mitrade had failed to take reasonable steps that would have resulted in distribution conduct being consistent with its TMDs. This stop order is the first one issued by ASIC on the grounds of a failure to take such steps.

ASIC issues interim stop order on Humm following BNPL review

ASIC [made](#) an interim stop order on 25 May 2023 to prevent Humm BNPL Pty Ltd (**Humm**) from issuing its BNPL product due to deficiencies in its TMD. The order was revoked following immediate corrective action by Humm.

General insurers to repay consumers for broken pricing promises

ASIC has [called](#) on all general insurers to remove unnecessary pricing complexity and fix their systems, practices and controls so they can deliver on the pricing promises made to customers. This follows ASIC's [release](#) of Report 765 *When the price is not right: Making good on insurance pricing promises*, published on 23 June 2023. The report noted that ongoing pricing failures will see general insurers repay \$815 million to more than 5.6 million consumers.

In related news, in June 2023, Insurance Australia Limited (**IAL**) was [penalised](#) \$40 million by the Federal Court for failing to honour discount promises made to customers who held NRMA branded insurance policies. The Court found that IAL had made false or misleading representations to over 600,000 customers between March 2014 and September 2019 by failing to deliver the full amount of loyalty and no claim bonus discounts promised to customers when they renewed their NRMA branded motor, home, boat and caravan insurance policies.

Crown casinos \$450 million penalty

Crown Melbourne and Crown Perth (**Crown**) were sued by AUSTRAC for breaches of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). Crown and AUSTRAC filed joint submissions with the Federal Court in May 2023 for the payment of a \$450 million penalty in instalments over 2 years. The Court [made](#) orders to ratify the proposed penalty on 11 July 2023.

APRA agrees to enforceable undertaking from Bank of Queensland

APRA has [agreed](#) to a court enforceable undertaking from Bank of Queensland Limited (**BOQ**). The undertaking aims to rectify breaches of APRA prudential standards relating to liquidity, outsourcing and business continuity management in 2022 and 2023. As part of the undertaking, BOQ has agreed to prepare a remediation plan, submit the plan to APRA for approval, and appoint an independent reviewer to provide reports on the implementation of the plan.

Contact us



Patrick Dwyer
Legal Director
patrick.dwyer@dwyerharris.com
0406 404 892



Kathleen Harris
Legal Director
kathleen.harris@dwyerharris.com
0400 133 775