



DWYER HARRIS



# FINANCIAL SERVICES AND CREDIT

## QUARTERLY UPDATE

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## CONSUMER CREDIT

### Minister sets out consumer credit agenda

On 12 July 2022, Assistant Treasurer and Minister for Financial Services, Mr Stephen Jones, [delivered](#) a speech at the Responsible Lending and Borrowing Summit in which he announced that the responsible lending laws would not be revisited, affirmed that buy-now-pay-later products should be treated as credit products, and said that Labor was committed to strengthening consumer protections associated with payday lending.

### Consumer credit reform

The *Financial Sector Reform Bill 2022* (Cth) (the **FSR Bill**) was [introduced](#) on 8 September 2022. One part of the Bill includes proposed consumer credit reforms recommended by the review into small amount credit contracts (**SACCs**) which [reported](#) back in 2016. The changes include amendments affecting SACCs and consumer leases.

The amendments for SACCs include:

- Licensees will be prohibited from entering into a SACC with a consumer if the repayments under the contract would not meet the requirements prescribed in the regulations.
- Currently a SACC is presumed to be unsuitable for a consumer if the consumer has had two or more other SACCs in the past 90 days; or is in default under another SACC. This rebuttable presumption will be repealed.
- SACCs will be required to have equal repayments and equal repayment intervals over the life of the loan, subject to certain limited exceptions.
- Licensees will not be permitted to charge a consumer a monthly fee in respect of the residual term of the SACC where the consumer fully repays the loan early.
- Licensees will be prohibited from making unsolicited communications to a consumer that contain an offer or invitation to enter into or apply for a SACC in certain circumstances.
- Licensees will be required to document in writing their assessment that a SACC is not unsuitable for a consumer.
- Licensees will have to display information and give information to consumers about SACCs in accordance with requirements determined by the Australian Securities and Investments Commission (**ASIC**) in a legislative instrument.
- SACC providers will be prohibited from making referrals in certain circumstances.

For consumer leases, the proposed forms include:

- A cap will be introduced for the total amount that would be payable by a lessee in connection with the consumer lease.
- Lessors of household goods will have to obtain and consider a consumer's account information for the preceding 90 days in the course of verifying the consumer's financial situation.
- A regulation-making power to prescribe a protected earnings amount for consumer leases for household goods.
- Lessors of household goods will be generally prohibited from making unsolicited communications in public places in relation to consumer leases for household goods.
- Lessors of household goods will be required to disclose the base price of the goods being leased and the difference between the base price and the total amount payable by the lessee in connection with the lease.
- Consumer leases for an indefinite period will become regulated.

An anti-avoidance provision will also be introduced to prohibit a person from entering into, beginning to carry out, or carrying out a scheme for an avoidance purpose in relation to SACCs, consumer leases or product intervention orders.

On 29 August 2022, the Treasury [released](#) a consultation draft of a new *Treasury Laws Amendment (Modernising Business Communications) Bill 2022* (Cth). An earlier [version](#) of the Bill before the election had included proposed amendments to the *National Consumer Credit Protection Act 2009* (Cth) which would have allowed certain documents under the National Credit Code to be given electronically. These amendments have been removed from the reintroduced Bill and Treasury has advised that they will be considered at a later date.

## Product intervention orders for credit contracts

On 14 July 2022, ASIC [announced](#) product intervention orders imposing conditions on the issuing of short term credit and continuing credit contracts to retail clients. The legislative instruments prohibit the provision of short term credit and continuing credit contracts that involve charging unreasonably high fees to retail clients, in excess of cost limits in the exemptions of section 6 of the National Credit Code. The changes commenced from 15 July 2022.

## CONSUMER PROTECTION

### Unfair contract terms

A Bill to amend the unfair contract terms (UCT) regime was [introduced](#) on 28 September 2022. The *Treasury Laws Amendment (More Competition, Better Prices) Bill 2022* (Cth) proposes to ban the use of unfair contract terms in standard form consumer or small business contracts and will create new civil penalty provisions for breaches of the prohibitions. The Bill also expands the coverage of the UCT regime. It will increase the small business definition thresholds, remove the contract value threshold for contracts under the Australian Consumer Law, and raise the value threshold for contracts regulated by the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**), so that the regime captures an expanded class of small business standard form contracts.

### Penalties for anti-competitive conduct

On 18 August 2022, Treasury [released](#) exposure draft legislation which proposes to increase penalties for corporations and individuals who engage in anti-competitive conduct, such as cartels, misuse of market power, and exclusive dealing. The draft legislation would see the maximum pecuniary penalty provisions for corporations under Part IV of the *Competition and Consumer Act 2010* (Cth) and the Australian Consumer Law increase from \$10 million to \$50 million and from 10% of a corporation's annual turnover to 30% over the period the breach occurred. Similarly, the maximum pecuniary penalty for individuals would increase from \$500,000 to \$2.5 million.

### Combating scams

On 4 July 2022, the Australian Competition and Consumer Commission (ACCC) [released](#) *Targeting scams: Report of the ACCC on scams activity 2021*. In the report the ACCC indicated its support for Australian banks to adopt a system similar to the UK's Confirmation of Payee initiative, which would match the account number to the name of the intended recipient to target scams occurring by bank transfer.

On 20 July 2022, the Chair of the ACCC, Ms Gina Cass-Gottlieb, [delivered](#) a speech at the Law Council of Australia's 2022 Consumer Rights Forum on scams. Ms Cass-Gottlieb outlined how the ACCC believes a three-pronged approach is necessary to combat scammers:

- Stopping scammers reaching consumers by disrupting how they can contact possible victims e.g. phone calls, SMS, email, social media.
- Educating consumers so that they are able to recognise scams that do reach them.
- Putting measures in place so that if a consumer attempts to transfer funds to a scammer, there is a safety net there to prevent this from happening.

This last step includes financial institutions preventing scammers from opening accounts, ensuring systems in place can flag and block suspicious transactions, and introducing confirmation of payees to prevent payments from being redirected.

The Australian Banking Association is [encouraging](#) the adoption of PayID technology as a way to prevent scams, as PayID enables users to see the name of the account holder for an account registered with a PayID before transferring their funds.

Meanwhile the Consumer Law Action Centre is now [calling](#) for banks to be made liable for reimbursing blameless victims of scams.

## Revised Customer Owned Banking Code of Practice authorised

On 9 August 2022, the ACCC [authorised](#) a revised version of the Customer Owned Banking Code of Practice (**COBCOP**) for a period of 5 years. The revised [COBCOP](#) takes effect on 31 October 2022.

### CORPORATE

## Modernising Business Registers legislation

The commencement date of the Modernising Business Registers Program has been postponed until 1 July 2026 with the passage of the *Treasury Laws Amendment (2022 Measures No. 1) Act 2022* (Cth), which received [assent](#) on 9 August 2022. The program will bring together more than 30 ASIC registers and the Australian Business Register in one place and is being implemented by the Australian Taxation Office.

### DIGITAL ASSETS

## IOSCO Crypto-Asset Roadmap released

The International Organisation of Securities Commissions (**IOSCO**) is the international association of securities regulators. The IOSCO Board has set up a Fintech Task Force to address Fintech and crypto assets. On 7 July 2022, IOSCO [released](#) its Crypto-Asset Roadmap for 2022-2023. The Roadmap is split into two streams which will focus on addressing the crypto and digital assets, particularly emerging risks within that field and the regulation of those assets, and the potential of decentralised finance.

## Guidance on stablecoin arrangements

The Committee on Payments and Market Infrastructures (**CPMI**) and IOSCO [issued](#) a joint media release on the treatment of stablecoins on 13 July 2022. Stablecoins are cryptocurrencies whose market value is attached to an external reference, for example fiat money. CPMI and IOSCO confirmed that if a stablecoin performs a transfer function, that is, can be transferred between users, and is determined by relevant regulatory authorities to be systemically important, the stablecoin arrangement will be expected to abide by the Principles for Financial Market Infrastructures. These principles are the international standards that apply to financial market infrastructures.

## Crypto asset reform

On 22 August 2022, Assistant Treasurer and Minister for Financial Services, Mr Stephen Jones, and Assistant Minister for Competition, Charities and Treasury, Dr Andrew Leigh, [published](#) a joint media release on crypto asset reforms. The media release outlines the Federal Government's intention to start consultation with stakeholders on a framework for the crypto asset industry and regulators. As a first step, Treasury will prioritise 'token mapping', to identify how crypto assets and related services can best be regulated.

## Crypto assets not taxed as foreign currency

On 22 June 2022, the Federal Treasurer, Dr Jim Chalmers, [announced](#) that the Federal Government would move to enact legislation to confirm that crypto assets will not be taxed as a foreign currency. On 6 September 2022, exposure draft legislation was [released](#). Submissions on the draft legislation were due by 30 September 2022.

## Central bank digital currency

The Reserve Bank of Australia is [collaborating](#) with the Digital Finance Cooperative Research Centre to research use cases for a central bank digital currency (CBDC) in Australia. A white paper was [released](#) on 26 September 2022.

## De-banking

The Council of Financial Regulators (CFR) has [published](#) advice it gave to the Treasurer in August 2022 on the problem of “de-banking”. The advice was in response to a reference given by the then Treasurer in March 2022. The recommendations include collecting de-banking data, introducing transparency and fairness measures, advising the major banks of the Government’s expectation that they provide guidance on the risk tolerance and requirements to the affected sectors, and possibly funding “capability uplift” within the affected sectors to help uplift the compliance processes of businesses, particularly small enterprises.

## Private member’s Bill on digital assets

On 19 September 2022, Senator Andrew Bragg [published](#) a draft Bill which proposes to create licenses for digital asset exchanges, digital asset custody services, and stablecoin issuers, and to establish disclosure requirements for facilitators of the e-Yuan in Australia. Consultation closes 31 October 2022.

## ESG

### Climate Change Act

The *Climate Change Act 2022* (Cth) and *Climate Change (Consequential Amendments) Act 2022* (Cth) received [assent](#) on 13 September 2022. The primary Act legislates Australia’s greenhouse gas emissions reduction targets: a 43% reduction from 2005 levels by 2030 and net zero by 2050. The Minister must prepare and table an annual climate change statement and the Climate Change Authority must give the Minister information about the annual statement and future greenhouse gas emissions reduction targets.

### Climate change risk disclosure guidance issued

On 3 August 2022 the Financial Services Council [published](#) guidance on climate risk disclosure in investment management. The guidance sets out principles for Australian fund managers to ensure climate-related disclosures to consumers are accurate and backed by clear evidence. It covers setting net zero targets for investment portfolios, important considerations when labelling funds to avoid climate greenwashing, and reporting climate risk in line with the Taskforce on Climate Related Financial Disclosures.

### APRA survey of climate risk management

On 4 August 2022, the Australian Prudential Regulation Authority (APRA) [published](#) the results of its survey following the release of its Prudential Practice Guide *CPG 229 Climate Change Financial Risks* (CPG 229) in November 2021. Overall, APRA considered that the survey responses presented a picture of reasonable cross-industry alignment to APRA’s guidance, but climate risk remains an emerging discipline, with only a small portion of survey respondents



reporting that they had fully embedded climate risk across their risk management framework. APRA found that there was limited use of more advanced quantitative risk metrics such as scope 3 and financed emissions, and forward-looking exposure to physical and transition risk.

## FINANCIAL ADVICE

### Quality of Advice Review

In March 2022, the final terms of reference for the Quality of Advice Review were [published](#). Subsequently, the Proposals Paper for the Quality of Advice Review was [released](#) on 29 August 2022. The paper outlines several proposals for reform related to the provision of financial advice, including:

- expanding the definition of 'personal advice' to apply in circumstances where the provider considers the client's objectives, financial situation or needs, or where a reasonable person might expect the provider to have considered any of these matters;
- no longer regulating 'general advice' as a financial service; and
- requiring persons who provide personal advice to provide 'good advice', which would be defined as advice that would be reasonably likely to benefit the client.

Other changes were proposed in relation to the definition of a 'relevant provider' of financial advice, providing 'intra-fund' advice to superannuation members, paying for advice through superannuation, disclosure documents, design and distribution obligations, and the transition period for implementing the changes proposed. Submissions were due on 23 September 2022.

### Financial adviser education standards

On 24 August 2022, Assistant Treasurer and Minister for Financial Services, Mr Stephen Jones, [published](#) a media release on changes to financial adviser education standards. The Minister outlined the Federal Government's intention to remove the requirement for financial advisers to have a tertiary qualification if an adviser has 10 years' experience, a clean record, and has passed the relevant exam. Treasury is [consulting](#) on how to implement this change and how education standards for new entrants can be improved. Submissions were due on 16 September 2022.

## FINANCIAL MARKETS

### Market management in outages

On 28 June 2022, the Australian Securities Exchange (**ASX**) [released](#) a consultation paper on market management. The consultation follows a review of actions the ASX has taken during technical issues or market outages. This consultation paper provides transparency on the ASX's existing market management procedures. The ASX is seeking feedback on current practices related to:

- certainty about orders and trades during an outage;
- market session states;
- the approach, frequency, and content of ASX communications; and
- intraday checkpoints and cut-off times.

### ASIC Market Integrity Rules

The *ASIC Market Integrity Rules (Securities Markets) Determination 2022/482* [commenced](#) on 11 July 2022. The instrument sets out ASIC's allocation of Tier 1 and Tier 2 Equity Market Products.

## CHES replacement

On 30 June 2022, the ASX [released](#) *CHES Replacement: Tranche 3 and Combined Rule Amendments*. The paper is a response to a public consultation on a replacement system for CHES and amendments to ASX Settlement Operating Rules, ASX Clear Operating Rules, ASX Operating Rules, and ASX Appeals and Enforcement Rules. In its response, the ASX noted that the replacement system for CHES that will use distributed ledger technology will continue to use the name 'CHES' and that amendments to the draft rules will be made to clarify obligations for market participants.

On 3 August 2022, the ASX [announced](#) that there would be a delay to the replacement of CHES following an independent review of the new CHES application software. Following the conclusion of a review of the ASX's work to date it is expected that a new 'go-live date' for the new platform will be announced.

## FINANCIAL PRODUCTS

### Regulatory Guide for Product Design and Distribution Obligations

On 27 June 2022, ASIC [released](#) an update to *Regulatory Guide 274 Product design and distribution obligations*. Issuers of financial products must now provide significant dealing notices through the ASIC Regulatory Portal.

### Over-the-counter derivative issuers

On 9 September 2022, ASIC announced it had [remade](#) class order CO 12/752 *Financial requirements for retail OTC derivative issuers*. The class order was due to sunset on 1 October 2022. The new instrument, *ASIC Corporations (Financial Requirements for Issuers of Retail OTC Derivatives) Instrument 2022/705*, will sunset on 1 October 2027. The instrument sets out the financial requirements for issuers of over-the-counter derivatives to retail clients.

### ASIC warns brokers over high-risk products and services

On 31 August 2022, ASIC [issued](#) a warning to brokers considering offering high-risk products and services to retail investors. Examples of high-risk products and services named by ASIC include securities lending, crypto-assets, and offers of 'zero' or 'low-cost' brokerage. ASIC Commissioner Danielle Press warned that Australian financial services (AFS) licensees may be liable for significant civil penalties if they do not do all things necessary to ensure the financial services covered by their licence are provided efficiently, honestly, and fairly.

### Ban on binary options extended

On 3 May 2021, ASIC banned the sale of binary options to retail clients in order to prevent retail clients from losing money trading binary options. This product intervention order was due to expire on 7 October 2022. Following a consultation [conducted](#) in May and June of 2022, ASIC [released](#) *Report 736 Response to submissions on CP 362 Extension of the binary options product intervention order*. On 5 September 2022, ASIC announced that the product intervention order banning the issue and distribution of binary products to retail clients would be extended until 1 October 2031.

### Commencement of CCIV Regime

From 1 July 2022, corporate collective investment vehicles (CCIVs) can be registered, following the [introduction](#) of the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* (Cth) and Chapter 8B to the *Corporations Act 2001* (Cth) (**Corporations Act**). A CCIV is a new type of company that is limited by shares and has at least one sub-fund that forms all or part of the business of a CCIV.

To assist the introduction of the CCIV regime, ASIC [released](#) guidance for the registration of CCIVs and their sub-funds and [updated](#) several other regulatory guides.

The ASIC Corporations (*Financial Requirements for Corporate Directors of Retail Corporate Collective Investment Vehicles*) Instrument 2022/449 [commenced](#) on 5 July 2022. The instrument creates financial requirements for the corporate directors of CCIVs related to cash needs, net tangible assets, and audits.

## FINANCIAL SERVICES

### Clarifying corporations and financial services law

On 24 August 2022, the Federal Government [released](#) exposure draft legislation with the aim of reducing the complexity of corporations and financial services law. The draft legislation seeks to make corporations and financial services law more adaptive and efficient following suggestions [made](#) by the Australian Law Reform Commission (ALRC) in *Financial Services Legislation: Interim Report A*. The draft legislation repeals redundant definitions and clarifies the meaning of defined terms in the Corporations Act and the ASIC Act.

The ALRC [released](#) its Interim Report B on 30 September 2022. Interim Report B deals with technical improvements to simplify corporations and financial services legislation. The report invites submissions from stakeholders on 16 proposals for reform relating to a legislative hierarchy model and improvements to the design of legislation, and two questions in relation to draft guidance on the delegation of legislative power and the use of evidential provisions. Consultation closes on 30 November 2022.

### Extended relief for foreign financial services providers

On 2 August 2022, ASIC announced that it had [extended](#) existing relief to foreign financial services providers from the requirement to hold an AFS licence when providing financial services to Australian wholesale clients. The relief was due to expire on 31 March 2023 but has been extended to 31 March 2024.

### Extended relief for business introduction services

ASIC has [extended](#) the relief for business introduction services for registered managed investment schemes until 1 April 2025. The relief was due to expire on 1 October 2022. The design and distribution obligations (DDO) will apply to persons who, but for the relief, would otherwise need to comply with the DDO. ASIC decided not to extend the same relief to business introduction services for companies, as the crowd-sourced funding regime facilitates flexible and low-cost access to capital for small to medium sized unlisted companies.

## FINANCIAL SYSTEM

### Independent review of RBA

On 20 July 2022 the Government announced an independent review of the Reserve Bank of Australia. An issues paper was [released](#) on 15 September 2022. Submissions are due by 31 October 2022.

### Regional banking taskforce final report

The Regional Banking Taskforce was established on 22 October 2021. The final report was [published](#) on 30 September 2022. It makes 7 recommendations, covering:

- reviewing and strengthening the ABA's branch closure protocol, and implementing branch closure impact assessments;

- promoting and supporting Bank@Post services and maintaining access to cash;
- improving support for regional consumers experiencing vulnerability;
- supporting digital connectivity and literacy; and
- reviewing APRA's points of presence data collection to better understand how people do their banking.

## INSURANCE

### Incidental retail cover in business contracts

ASIC Corporations (*Incidental Retail cover*) Instrument 2022/216 [commenced](#) on 16 August 2022. ASIC [issued](#) the relief in the instrument to clarify the obligations of insurers and brokers when offering retail insurance as a part of business insurance contracts. The instrument exempts insurers and brokers from certain retail client obligations in Chapter 7 of the Corporations Act so that retail client obligations do not apply to business insurance contracts.

### Insurance reporting standards

On 25 August 2022, APRA [released](#) financial reporting standards for general insurers in support of the Government's cyclone and related flood damage reinsurance pool, which will be administered by the Australian Reinsurance Pool Corporation (**ARPC**). The ARPC is now included in the definition of an "APRA authorised reinsurer". The reporting standards indicate that reinsurance recoverables are not subject to a capital charge.

### Family violence relief

In the legislative instrument, *ASIC Corporations (Cash Settlement Fact Sheet and Confirming Transactions) Instrument 2022/809*, ASIC has [granted](#) relief to exempt insurers from providing certain notifications where doing so creates risks of family violence. Since 1 January 2022, insurers have to provide a Cash Settlement Fact Sheet and transaction confirmation to joint policyholders when they offer to settle a claim by a cash payment. The ASIC relief means that insurers do not need to provide these notifications where they reasonably believe that providing them would pose risks of family violence.

### ASIC reports on disability income insurance claims handling

On 2 September 2022, ASIC [published](#) its review of nearly 4800 individual disability income insurance claims received between 1 January and 30 June 2021. ASIC found that more work is needed by insurers to ensure that consumers are protected from unfair practices in non-disclosure investigations and physical surveillances.

## PRIVACY AND DATA

### Optus data breach and implications

The Government has [prepared](#) amendments to the *Telecommunications Regulations 2021* (Cth) in response to the Optus data breach. The regulations will allow Optus and other telcos to better coordinate with financial institutions, the Commonwealth, and States and Territories, to detect and mitigate the risks of cyber security incidents, frauds, scams and other malicious cyber activities. They will enable telecommunications companies to temporarily share approved government identifier information (such as driver licence, Medicare and passport numbers of affected customers) with regulated financial services entities to allow them to implement enhanced monitoring and safeguards for customers affected by the data breach. They will also permit sharing of identifiers to assist Commonwealth, and State and Territory agencies, to detect and assist in preventing fraud. The regulations cover financial institutions that are regulated by APRA, excluding branches of foreign banks. Entities wishing to receive the data must provide written commitments to the ACCC that they will comply with their obligations under

the *Privacy Act 1988* (Cth) (the **Privacy Act**), attest to APRA that they meet the relevant information security standard, and confirm in writing that the information they are seeking is necessary and proportionate. Approved recipients must satisfy robust information security requirements and protocols for any transfer and storage of data. Information received must be destroyed once it is no longer required.

The CFR's cybersecurity working group will examine and report on options to further improve the ability of financial institutions to identify at risk customers and credentials by utilising an existing secure and privacy protecting data sharing platform, to enable financial institutions to further enhance their protections for consumers from financial crime.

## Financial hardship reporting

[Amendments](#) to the *Privacy (Credit Reporting) Code 2014 (CR Code)* related to financial hardship reporting by credit providers and credit reporting bodies came into effect on 1 July 2022. Under recent amendments to the Privacy Act, financial hardship arrangements with individuals to adjust repayments under their loans and financial hardship information will be reported on an individual's credit report in addition to their repayment history. The updated CR Code provides protections for consumers around the use and disclosure of financial hardship information, prohibits the use of such information to calculate an individual's credit score, and limits the retention of financial hardship information to 12 months.

On 8 July 2022, ASIC [announced](#) it had adopted a "temporary no-action position" to enable eligible licensees, specifically large banks, to withhold the reporting of certain credit information on consumer credit reports where reporting that information could harm consumers. ASIC raised the concern that a victim of domestic violence who holds a joint loan with their partner and who has entered into a financial hardship arrangement with a bank may not want their partner to know about this arrangement. ASIC's announcement aims to prevent placing customers further at risk where this information would otherwise be reported.

## Consumer Data Right (CDR) update

- On 19 August 2022, Treasury [released](#) a consultation paper and exposure draft legislation on an amendment to the definition of product in the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*. The draft legislation would extend the definition of product to include "letting goods on hire, including on hire purchase" in order to capture the full range of lease products offered by banks. Submissions were due by 16 September 2022.
- On 22 July 2022, the ACCC [launched](#) the Consumer Data Right (CDR) sandbox. The CDR sandbox is a tool that [enables](#) CDR participants to test their CDR software solutions within a secure environment.
- On 19 August 2022, exposure draft legislation was [released](#) for the extension of the CDR to non-bank lenders. Submissions were due by 16 September 2022.
- On 15 September 2022 Treasury [called](#) for submissions on possible maintenance changes to the CDR rules, particularly on fitness for purpose, and in relation to the policy aims of the CDR. Consultation closes on 23 December 2022.
- On 26 September 2022 Treasury [released](#) exposure draft legislation which proposes a further channel for consumers to instruct a relevant business to initiate actions on their behalf and under their consent. This could include making a payment, opening or closing an account, switching providers, and updating personal details across providers. Consultation closes on 24 October 2022.
- The final report of the independent Statutory Review of the Consumer Data Right by Ms Elizabeth Kelly PSM was [released](#) on 29 September 2022.

## Digital Platform Priorities

The Digital Platform Regulators Forum is comprised of the ACCC, the Australian Media and

Communications Authority (**ACMA**), eSafety Commissioner, and the Office of the Australian Information Commissioner (**OAIC**). On 29 June 2022, the Digital Platform Regulators Forum [announced](#) their priorities for 2022/23: the impact of algorithms, digital transparency of digital platforms' activities, and increased collaboration between the members of the Forum.

## PRUDENTIAL

### Financial accountability regime (FAR)

The *Financial Accountability Regime Bill 2022* (Cth) (**FAR Bill**) was introduced into Parliament on 8 September 2022 (the previous Bill having lapsed as a result of the Federal election). The FAR Bill has been referred to the Senate Economics Legislation Committee. The Committee is due to report by 20 October 2022.

The Treasury held a [consultation](#) process from 12 September 2022 to 7 October 2022 on proposed Minister Rules to support the FAR Bill. The rules would prescribe: particular responsibilities and positions which cause a person to be subject to the FAR in the banking, insurance and superannuation sectors; the enhanced notification threshold, which is the total asset size above which an entity is required to comply with additional notification obligations; and the way that a written record can be authenticated in a proceeding as prima facie evidence of the statement it records.

### Remuneration requirements for APRA related entities

On 6 July 2022, APRA [released](#) a Discussion Paper on remuneration requirements for APRA-regulated entities. Submissions closed on 7 October 2022. Proposals outlined in the paper include:

- a requirement for APRA-regulated entities to publicly disclose how their remuneration arrangements are designed;
- a requirement for large and complex financial institutions to disclose how they have placed a material weight on non-financial metrics for key executives and material risk-takers; and
- APRA publishing centralised statistics to allow for better comparisons of remuneration outcomes between APRA-regulated entities.

### Public disclosure requirements for ADIs

On 6 July 2022, APRA [published](#) a Discussion Paper on enhancing the public disclosures of authorised deposit-taking institutions (**ADIs**). In the Discussion Paper APRA proposed several revisions to *Prudential Standard APS 330 Public Disclosure* including the introduction of a centralised publication of key prudential risk metrics. APRA proposes to remove several disclosure requirements for smaller ADIs, in favour of this centralised publication to promote transparency. The removal of disclosure requirements for smaller ADIs would take place in 2023 and the disclosure requirements for larger ADIs would commence in 2024.

### Definition of significant financial institution (SFI)

On 20 July 2022, APRA [released](#) a letter to industry on minor changes to the definition of a significant financial institution (**SFI**), in order to centralise that definition. An entity will be a SFI if its balance exceeds assets thresholds set by APRA, which differ depending on the entity's industry, or if APRA determines the entity to be a SFI, having regard to the complexity of the entity's operations and its group membership.

### Financial contingency and resolution planning

On 6 September 2022, APRA [released](#) draft guidance on financial contingency and resolution

planning. Prudential Practice Guides *CPG 190 Financial Contingency Planning* and *CPG 900 Resolution Planning* outline principles and examples of good practice to assist entities in meeting their requirements under the proposed *CPS 190 Financial Contingency Planning* and *CPS 900 Resolution Planning*. Submissions on the draft guidance are due by 6 December 2022.

## Guidance finalised capital framework for ADIs

On 26 July 2022, APRA [published](#) the final prudential practice guides that accompany the final capital adequacy and credit risk capital requirements for ADIs. The new practice guides provide guidance on how ADIs can implement the new ADI capital framework that becomes effective from 1 January 2023, including the use of capital buffers and the determination of credit risk capital requirements.

On 10 August 2022, APRA released the final reporting standards that pair with the final capital adequacy and credit risk capital requirements for ADIs.

## APRA consultation on operational risk management standards

On 28 July 2022, APRA [released](#) for consultation draft *Prudential Standard CPS 230 Operational Risk Management (CPS 230)* on operational risk in the banking, insurance, and superannuation industries. The draft CPS 230 proposes to introduce a new cross-industry prudential standard that requires regulated entities to maintain effective internal controls for operational risk, be prepared to deliver critical operations during periods of disruption, and manage risks associated with the use of service providers. Submissions are due by 21 October 2022.

## APRA's Corporate Plan

On 8 August 2022, APRA [published](#) its Corporate Plan for the 2022-23 financial year. The release highlights APRA's plan to increase its focus on the impact of new financial activities and participants; find solutions to emerging challenges such as superannuation income products, the accessibility of insurance, and the financial risks associated with climate change; and preserve the financial and operational resilience of Australia's banks, insurers, and superannuation funds.

## Private health insurers

APRA has [reviewed](#) the capital framework for private health insurers. The new framework will commence on 1 July 2023.

## Contingent liquidity for ADIs

APRA is [consulting](#) on proposed updates to guidance on contingent liquidity for locally-incorporated ADIs subject to the minimum liquidity holdings requirements in *Prudential Standard APS 210 Liquidity*.

## SUPERANNUATION

### Your Future, Your Super review

The *Treasury Laws Amendment (Your Future, Your Super) Act 2021* (Cth) [received](#) royal assent on 22 June 2021. On 7 September 2022, Treasury [released](#) a consultation paper on a review of the Your Super, Your Future measures. The Federal Government is seeking feedback on whether there are any unintended consequences and implementation issues arising from the performance test, YourSuper comparison tool, stapling, and best financial interests duty. Submissions are due by 14 October 2022.

## Superannuation calculators and retirement estimates

The provision of superannuation calculators and retirement estimates may involve giving financial advice. The *ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603* [commenced](#) on 1 July 2022. The instrument updates conditional relief from AFS licensing requirements of the Corporations Act for providers of superannuation calculators and superannuation fund trustees who prepare retirement estimates for their members.

On 5 July 2022, ASIC [released](#) *Regulatory Guide 276 Superannuation forecasts: Calculators and retirement estimates*. The new regulatory guide provides information on what providers need to do in order to rely on the relief.

## Prudential standard on investment governance in superannuation

On 19 July 2022, APRA [released](#) its final revisions to *Prudential Standard SPS 530 Investment Governance* and its response to a consultation on those revisions. APRA indicated the revisions are aimed at ensuring better outcomes for superannuation members through requirements for stress-testing, for registrable superannuation entity (RSE) licensees to have an adequate valuation governance framework, and liquidity management requirements.

## Faith-based superannuation funds

Draft legislation has been [released](#) to allow APRA to consider a superannuation fund's religious affiliation when applying the performance test. The draft legislation would require trustees of RSEs to apply to APRA for faith-based status and exempt faith-based products from the consequences of failing the Your Future, Your Super Performance Test if they passed a supplementary test that would consider their faith-based investment strategy. Submissions were due by 16 August 2022.

## Taxation of military superannuation benefits

In *Commissioner of Taxation v Douglas* [2020] FCAFC 220 the Federal Court of Australia [altered](#) the treatment of certain superannuation benefits paid to veterans, finding that military invalidity superannuation pensions payable under the Defence Force Retirement and Death Benefits (DFRDB) scheme and the Military Superannuation and Benefits (MSB) on or after 20 September 2007 are to be taxed as superannuation lump sums. On 25 July 2022, Treasury [released](#) draft legislation with the aim of ensuring that no veteran faces worse income tax outcomes. The draft legislation reverses the impact of the Federal Court's decision in relation to all schemes, other than invalidity benefits and death benefits for beneficiaries of invalidity pensioners paid from DFRDB and MSB schemes that commenced on or after 20 September 2007.

## Standards for superannuation strategic planning and member outcomes

*Prudential Standard SPS 515 Strategic Planning and Member Outcomes (SPS 515)* requires RSE trustees to evaluate their performance in delivering outcomes to their members. On 1 August 2022, APRA [released](#) a discussion paper on proposed changes to SPS 515, and related practice guides. The discussion paper outlines several proposed reforms, including:

- strengthening requirements to ensure trustees deliver quality outcomes in a more measurable way;
- increasing board oversight of financial projections and resources in a way that better reflects their risk profile; and
- ensuring timely action is taken where there are underperforming products or funds.

Submissions are due by 11 November 2022.



## Internal dispute resolution

ASIC is reviewing the internal dispute resolution processes of RSEs. On 10 August 2022, ASIC [urged](#) RSE trustees to review their internal dispute resolution arrangements after the first stage of the ASIC review revealed several compliance failures. Notably, RSE trustees are required to record all member complaints, yet funds recorded were significantly lower than the overall rate, and in nearly 50% of the cases customers were not informed of any delays in responding to their complaint, as required.

## Meeting disclosures

The *Superannuation Industry (Supervision) Amendment (Annual Members' Meetings Notices) Regulations 2022* (Cth) were [registered](#) on 1 September 2022. The regulations update the annual members' meeting notice disclosure requirements. The amendments remove itemised disclosure of certain expenditure, remove the double-counting of certain expenditure, and align the definition of 'related party' to the definition in the Australian Accounting Standards.

## TAXATION

### Guidance issued on CRS and FATCA reporting

On 15 July 2022 the Australian Taxation Office [released](#) a self-review guide and toolkit which provides practical information for reporting financial institutions on how to conduct a self-review of their automatic exchange of financial information (**AEOI**) framework for CRS and FATCA. It outlines AEOI governance, due diligence obligations and reporting systems.

### Global agreement on corporate tax

Treasury [released](#) a consultation paper and OECD model rules and commentary on 4 October 2022. These propose to adopt international corporate tax reforms endorsed by Australia and over 130 other countries on 8 October 2021 to address the challenges arising from the digitalisation of the economy. The reforms were developed by the OECD Inclusive Framework on Base Erosion and Profit Shifting. They involve a "two-pillar solution". Pillar One seeks to reallocate taxation of the largest multinationals to countries where their goods and services are consumed. Pillar Two aims to establish a global minimum corporate tax rate of 15%. Consultation closes on 1 November 2022.

## AML/CTF

### Guidance on reporting TTRs

On 27 June 2022, the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) [released](#) updated guidance on reporting threshold transaction reports when a customer completes multiple cash transactions. AUSTRAC previously required reporting entities that provided multiple services to a customer that added up to \$10,000 to decide whether to treat these serves as a singly reportable transaction or multiple transactions for the purposes of threshold transaction reporting. Following consultation, AUSTRAC's updated guidance only requires reporting entities to submit a threshold transaction report for individual cash transactions of over \$10,000. However, if reporting entities suspect customers are structuring a large transaction so as to split it into separate smaller transactions to avoid reporting, reporting entities must report this as a suspicious matter to AUSTRAC. AUSTRAC has given reporting entities a 12-month transition period from 1 July 2022 to adopt to the new guidelines.

### Draft changes to IFTI reporting

The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Chapter 16 Amendments) Instrument 2022* (Cth) was [registered](#) on 13 September 2022. SWIFT is migrating

its messaging format to the ISO 20022 xml messaging format for cross border payments from November 2022. The amendments retain much of the old content of Chapter 16 and add new content to capture the additional fields in the ISO 20022 message format. This will allow Reporting Entities to report IFTIs in the current format or the ISO 20022 format.

## New risk assessments

On 26 September 2022, AUSTRAC [released](#) risk assessments on the remittance sector and bullion dealers and a threat update on superannuation.

## Sources of funds and wealth

AUSTRAC has [published](#) guidance on sources of funds and wealth, which is intended to assist reporting entities undertake source of funds and source of wealth checks and mitigate the risk that a customer's funds relate to money laundering, terrorism financing or other serious crimes.

## e-learning modules

AUSTRAC has [released](#) 4 anti-money laundering and counter-terrorism financing (AML/CTF) e-learning modules, designed for new reporting entities or those wanting to refresh their understanding of AML/CTF regulation and their compliance obligations.

## DISPUTES AND ENFORCEMENT

### ASIC's priorities

On 22 August 2022, ASIC [released](#) its priorities for 2022-26. ASIC's external priorities are:

- product design and distribution;
- sustainable finance;
- retirement decision making, particularly superannuation products and financial advice; and
- technology risks, particularly digitally enabled misconduct.

The Chair of ASIC, Mr Joseph Longo, [delivered](#) a speech on ASIC's priorities on 23 August 2022. He explained that ASIC's approach to addressing these priorities includes projects focused on improving sustainable finance practices and disclosure of climate risks; supervising and enforcing the design and distribution obligations; addressing market integrity issues connected to crypto assets; and combatting financial scams.

### Effectiveness and capability review of ASIC

On 25 August 2022, the Effectiveness and Capability Review of ASIC undertaken by the Financial Regulator Assessment Authority (FRAA) was [tabled](#) in Parliament. This marks the FRAA's first report into ASIC, which assessed ASIC's effectiveness and capability across the areas of strategic prioritisation, planning and decision making, surveillance, and licensing. The review found that ASIC:

- requires an uplift in its data and technological capacity;
- should enhance the quality of its engagement with stakeholders;
- should enhance the ability to measure its own effectiveness and capability; and
- should continue to broaden its mix of skills to meet current and future needs.

### ASIC industry funding review

The Federal Government announced a review of the ASIC Industry Funding Model on 8 August

2022, and [issued](#) terms of reference. On 28 September 2022 Treasury [released](#) a Discussion Paper seeking stakeholder views on options and examples of proposed changes to ASIC industry funding. The consultation closes on 28 October 2022.

## **Breach reporting – ASIC’s approach**

ASIC [announced](#) on 10 August 2022 that as part of its 2022-23 priorities, it will focus on improving the operation of the reportable situations regime. ASIC acknowledged that the regime has led to a number of implementation challenges and said that it will continue to engage with industry on reporting practices adopted by licensees to further understand any issues that are placing an unnecessary compliance burden. ASIC also committed to communicating clear expectations for compliance with the new regime and to design solutions to ensure the consistency and quality of reporting meets the policy objectives of the regime, as well as to improve the efficiency of ASIC’s data collection and analysis. ASIC said that it will consider whether enhancements are required to the approved form on the Regulatory Portal for lodging reports, and whether further practical guidance should be developed to assist licensees in meeting their obligations.

ASIC’s first public report on breach reports is due to be published in October 2022. ASIC said that the report will not name licensees, nor refer to the nature or number of reports lodged by specific licensees.

## **Ending ASIC Instruments**

On 24 August 2022, Treasury [released](#) exposure draft legislation that would see matters in ASIC legislative instruments moved into Acts and Regulations. The intent is to make it easier to identify rights and obligations under financial services law. Submissions on the draft legislation were due by 20 September 2022.

## **Compensation Scheme of Last Resort**

On 8 September 2022, the *Financial Sector Reform Bill 2022* (Cth) was [introduced](#) into Federal Parliament. The Bill seeks to establish the Financial Services Compensation Scheme of Last Resort (**CSLR**), which will provide compensation to eligible victims of financial misconduct who have not been paid by the financial institution who engaged in that conduct, typically because the institution has become insolvent.

On 8 September 2022, Treasury [released](#) exposure draft regulations relating to the CSLR operator’s reporting requirements and the identification of persons and sectors upon whom a levy will be imposed. The draft regulations also explain the methods that underpin the calculation for the amount of levy payable and how calculations may differ based on the levy imposed. The draft regulations identify the sub-sectors who will be subject to an annual levy to support the CSLR.

## **Financial Services and Credit Panel**

On 3 August 2022, ASIC [published](#) new guidance on the Financial Services and Credit Panel (**FSCP**). ASIC also released an information sheet on the rights of financial advisors when the FSCP is making a decision about them.

## **Virtual hearings for regulators**

On 29 August 2022, Treasury [published](#) exposure draft legislation that clarifies that relevant regulators may hold virtual hearings and examinations. The regulations would affect ASIC, APRA, the ACCC, and the Tax Practitioners Board.

## Updated remediation guidance

On 27 September 2022 ASIC [published](#) an update to *Regulatory Guide 277 Consumer remediation*, together with *Making it right: How to run a consumer centred remediation field guide*.

## ASIC's first use of DDO stop orders

ASIC's power to make design and distribution obligation (**DDO**) stop orders took effect on 5 October 2021. On 28 July 2022, for the first time, ASIC [placed](#) stop orders on 3 financial firms as a result of deficiencies in the target market determinations (**TMDs**) for their products. Stop orders were placed on Responsible Entity Services Limited, UGC Global Alpha Limited, and UGC Global Alpha Fund Limited. These companies either did not appropriately identify their target market or did not have a TMD.

## ASIC sues Mercer for fees charged

On 30 June 2022, ASIC [announced](#) that it had commenced proceedings against Mercer Financial Advice (Australia) Pty Ltd for false or misleading representations made related to fees charged and for failing to provide fee disclosure statements.

## Lanterne Fund Services' risk and compliance failures

Lanterne Fund Services Pty Ltd (**Lanterne**) holds an AFS licence and operates a business whereby its authorised representatives provide advice and other financial services to wholesale customers. On 7 July 2022, ASIC [announced](#) that it had commenced proceedings against Lanterne for failing to meet obligations attached to its AFS licence. ASIC alleges that Lanterne operated under a 'licensee for hire' business model and failed to have adequate risk management systems and resources in place required to conduct adequate supervision of its representatives. ASIC also alleges that Lanterne failed to maintain competence to provide financial services, did not ensure its representatives had adequate training, and did not do all things necessary to ensure that financial services were provided efficiently, honestly, and fairly.

## Select engaged in unconscionable conduct

Select AFSL Pty Ltd (**Select**), BlueInc Services Pty Ltd (**BlueInc**), and Insurance Marketing Service Pty Ltd (**IMS**) sold life, funeral, and accidental insurance issued by St Andrew's Life Insurance under the names 'Let's Insure' and 'FlexiSure.' Select sub-contracted many of its sales responsibilities to BlueInc and IMS.

On 8 July 2022, Abraham J of the Federal Court of Australia [determined](#) that Select, BlueInc, and IMS engaged in unconscionable conduct when mis-selling insurance over the phone to 14 customers, ten of whom lived in remote communities.

## Over \$102 million paid to Freedom Insurance customers

In 2021, ASIC commenced civil penalty proceedings against the former Managing Director and former Quality Assurance Manager of Freedom Insurance due to their roles in promoting a sales incentive program amongst Freedom Insurance staff which saw sales agents qualify for overseas holidays and other benefits if they made the most sales. On 17 August 2022, ASIC [announced](#) that over \$102 million in remediation had been secured so far for approximately 83,000 customers who were or may have been mis-sold insurance policies by Freedom Insurance between 2010 and 2018.

## **HICC enforceable undertaking following unsolicited sales of private health insurance**

Health Insurance Comparison Choosewell Pty Ltd (**HICC**) made unsolicited phone calls to consumers, attempting to sell private health insurance. HICC admitted to breaching the Australian Consumer Law by failing to inform consumers of their termination rights, which included a 10 day cooling off period for contracts, when entering into unsolicited consumer agreements for private health insurance. On 6 September 2022, the ACCC [announced](#) that it had accepted a 3 year court-enforceable undertaking from HICC in which HICC committed to not entering into unsolicited sales contracts without giving consumers verbal and written information about their termination rights, and committed to notifying the relevant health insurance provider that the contract resulted from an unsolicited consumer agreement. HICC also paid a penalty an infringement notice issued by the ACCC.

## **Latitude Spam Act penalty**

ACMA has levied a \$1.55 million infringement notice [penalty](#) on Latitude Finance Australia Limited (**Latitude**). ACMA found that Latitude sent more than 3 million commercial electronic messages without including a functional unsubscribe facility between 1 June 2021 and 23 March 2022, in breach of the *Spam Act 2003* (Cth). ACMA also found that there were 2,100 contraventions of the prohibition on sending unsolicited commercial electronic messages.

## **Latitude sued for misleading conduct**

ASIC [announced](#) on 5 October 2022 that it was suing Latitude and Harvey Norman Holdings Ltd (**Harvey Norman**) over the promotion of interest free payment methods. According to ASIC, from January 2020 to August 2021, advertisements promoting 'no deposit', 'interest free' payment methods over a specified term for purchases at Harvey Norman were misleading, as they did not disclose that consumers could only use the interest free payment method if they applied for and used a Latitude GO Mastercard. ASIC also alleges that the advertisements misrepresented the true cost of using the payment method because they failed to adequately disclose establishment fees and monthly account service fees.

## **BOQ fined for CDR rule breach**

Bank of Queensland Ltd (**BOQ**) has [paid](#) an infringement notice penalty in the amount of \$133,200 following an infringement notice issued by the ACCC for failing to provide a service enabling consumers' data to be shared. BOQ was required to be in a position to share data for savings accounts, term deposits and credit cards by 1 July 2021. BOQ did not make the required services available until 13 December 2021. This was the first infringement notice issued by the ACCC for an alleged breach of the CDR rules.

## **Dixon Advisory penalties**

On 19 September 2022 the Federal Court [imposed](#) a \$7.2 million fine on Dixon Advisory as the responsible licensee of 6 representatives who did not act in the best interests of clients to acquire, rollover or retain interests in a property fund and related products on 53 occasions between October 2015 and May 2019.

## **AMP companies fined \$14.5 million for fees for no service**

On 20 September 2022 the Federal Court [ordered](#) 5 AMP entities to pay a total of \$14.5 million in penalties. The entities had admitted liability for charging fees for services not provided to superannuation members on 1,452 occasions. Justice Moshinsky found that the most significant failing was not investigating whether there was a systemic issue, despite many complaints.

## Federal Court dismisses proceedings against CBA and Colonial First State

On 29 September 2022 the Federal Court [dismissed](#) proceedings in which ASIC alleged breaches of conflicted remuneration obligations by Commonwealth Bank of Australia (**CBA**) and Colonial First State Limited (**Colonial**). The arrangements were a case study in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and involved Colonial agreeing to pay CBA for the distribution of the Essential Super product. Justice Anderson found that the payments under the arrangement did not constitute benefits for the purposes of the definition of conflicted remuneration.

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