



DWYER HARRIS



FINANCIAL SERVICES AND CREDIT QUARTERLY UPDATE

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CONSUMER CREDIT

Credit card reforms passed

The next tranche of reforms to credit regulation has been [enacted](#) in the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018* (Cth), assented to on 5 March 2018.

The 4 changes introduced by the amendments are as follows:

- Unsolicited credit limit offers in relation to credit card contracts will be prohibited without exceptions. (Currently such offers can be made with the express consent of the consumer). This provision will commence on 1 July 2018. It will apply to contracts entered into any time, including before commencement.
- Responsible lending obligations for credit card contracts are being tightened. A consumer will be taken to be able to comply with their financial obligations under a credit card contract only with substantial hardship if they could not comply with an obligation to repay an amount equivalent to the credit limit of the contract within a period determined by ASIC. This provision will commence on 1 July 2019. It will apply to contracts entered into from commencement and will also apply (but only in relation to credit limit increases, or remaining in a credit card contract) to existing credit contracts.
- Credit card providers will be prohibited from imposing interest charges retrospectively to a credit card balance, or part of a balance, that has had the benefit of an interest free period. This provision will commence on 1 July 2019. It will apply to contracts entered into any time, including before commencement, but for existing credit card contracts will not apply in relation to the use of a card before commencement.
- All credit card contracts must allow consumers to request to reduce the limit of their credit card or terminate the credit card contract. The credit card provider must provide an online means for the consumer to make a request to reduce their credit card limit or terminate their credit card contract. If a consumer makes a request to reduce their credit limit or terminate their credit card contract, the credit card provider must not make a suggestion that is contrary to the consumer's request, and must take reasonable steps to ensure that the request is given effect to as soon as practicable. This provision will commence on 1 July 2019. It will apply to contracts entered into any time, including before commencement (except for the requirement that a credit provider must not enter into a credit card contract that does not have an entitlement to reduce the credit limit, or terminate the contract, which will only apply to new contracts from that date).

Simple hardship arrangements

ASIC has [issued](#) *Credit (Amendment) Instrument 2018/114* to extend until 1 March 2020 the exemption for having to record changes to a credit contract for a simple hardship arrangement, which is one that defers or reduces the obligations of a debtor or lessee for a period of no more than 90 days.

ASIC shadow shopping mortgage brokers

The Australian Securities and Investments Commission (**ASIC**) will shadow shop mortgage brokers this financial year. Reports say that the exercise is to investigate whether advice from brokers results in "positive consumer outcomes" and to "gain insight around how consumers purchase home loans".

CONSUMER PROTECTION

Australian Consumer Law proposed amendments

On 31 January 2018 Treasury [released](#) draft legislation and regulations to amend the Australian Consumer Law. Submissions closed on 28 February.

One proposed amendment relates specifically to financial services. This amendment is a clarification rather than a substantive change to the law. The *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**) is proposed to be amended to include a financial product in the definition of a financial service. The existing provisions in the ASIC Act do not refer to financial products: the definition of financial services is intended to have a broad definition, including financial products. The amendment will clarify that the consumer protections that already apply to financial services also apply to financial products.

The other proposed amendments include:

- **Consumer guarantees:** clarifying that the exemption from the duty of skill and care for service contracts for transporting and storing goods only applies when the buyer is buying the goods for business purposes, not when the seller is acting for business purposes.
- **Voluntary recalls:** a definition of voluntary recall will be introduced.
- **Unsolicited consumer agreements:** clarifying that the provisions also apply when the unsolicited sale occurs in a public place or the dealer could have entered the place without the invitation of the consumer.
- **False billing:** the ban on false billing will be extended so that it applies not only when a bill is sent for unsolicited services that are completed, but also when the unsolicited services are not provided.
- **Regulator powers:** information gathering powers of regulators will be expanded for investigations in relation to product safety and unfair contract terms.
- **Single price:** the single price required for goods or services will have to include any optional fees or charges pre-selected or not de-selected before the relevant representation.
- **Unconscionable conduct:** the unconscionable conduct protections in the Australian Consumer Law and the ASIC Act will be extended to publicly listed companies.
- **Follow on provisions:** private litigants will be able to rely on admitted facts and findings of fact from earlier proceedings, making it easier to bring private actions for breaches of the consumer protection provisions.
- **Warranties against defects:** the mandatory wording for warranties against defects will be amended. The wording clarifies the differences between supplying goods, supplying services and supplying both.

New Code of Banking Practice

The Australian Banking Association (**ABA**) (which recently changed its name from the Australian Banker's Association) lodged a revised Code of Banking Practice with ASIC in December 2017 for its approval. The revised Code adopts most of the recommendations made by the independent review of the Code conducted by Mr Phil Khoury. On 26 March 2018, the ABA [announced](#) that the new Code will be mandatory for ABA members, and that there would be a 12 month implementation period for members once ASIC had given its approval.

COMMERCIAL CREDIT

Changes to small business loan contracts by big banks

ASIC [released](#) a report (REP 565) on 15 March 2018 which details the changes made by the four major banks to remove so-called unfair terms from their small business loan contracts, including 'entire agreement' clauses, broad indemnities, extensive events of default, and financial covenants. Lenders to small business should review the report for guidance on their small business loan contracts and how they may need to be amended to address unfair contract terms.

COMPETITION

Productivity Commission review releases draft report

On 8 May 2017, the Treasurer asked the Productivity Commission to review competition in Australia's financial system. The Commission [published](#) a draft report in January 2018. Comments closed on 20 March, and there were 53 submissions received following the draft report. The final report is due to be delivered by 1 July 2018.

One of the themes in the report is that competition and stability are trade-offs and that the benefits of competition for consumers "are being reduced in the quest for stability". The Commission therefore recommends changes to regulation, including reviewing ownership limits on authorised deposit-taking institutions (**ADIs**) and prudential risk weightings.

Another area of focus has been intermediaries for mortgage lending. The Commission recommends that ASIC should impose a clear legal duty on mortgage aggregators owned by lenders to act in the consumer's best interests. Mortgage brokers generally should also be required to discuss and disclose their role and relationship with lenders when introducing customers. The Commission also proposes that data be published on median interest rates actually provided by lenders.

In the area of payments, the Commission says that the ePayments Code should be mandatory and that card payment interchange fees should be banned.

In relation to insurance, the Commission proposes that renewal notices for general insurance should transparently include the previous year's premium and the percentage change, and that insurance websites include a list of other brands underwritten by the same insurer. A deferred sales model should be required for sales of add-on insurance, and "general advice" as defined in the Corporations Act should be renamed so that "advice" only relates to personal advice.

ACCC reports on mortgage pricing

A Financial Services Unit was established last year in the Australian Competition and Consumer Commission (**ACCC**) for the purpose of undertaking regular inquiries into specific financial system competition issues.

The first enquiry conducted by the unit related to residential mortgage pricing. The ACCC [released](#) the interim report in March 2018.

The banks examined in the report were limited to those which are subject to the Major Bank Levy, namely the big four banks and Macquarie.

The focus of the report is on the transparency of residential mortgage prices.

The inquiry found that a large majority of borrowers with the banks are paying interest rates below the relevant headline interest rate, but the bank with the lowest headline interest rate is not always the bank with the lowest average rate paid by borrowers. The inquiry also found that the average interest rates paid for basic or no-frills products have been higher than for standard products, and that existing residential mortgage borrowers are paying higher interest rates than new borrowers at the same bank.

The inquiry also found that:

- the price competition between the banks has been "less than vigorous". The ACCC says that there are "signs of accommodative oligopoly behaviour among the big four banks";
- prudential and macro prudential measures imposed by APRA may have decreased price competition among ADIs for investor and interest only borrowers; and
- as at November 2017, the banks had stated that no specific decisions had been made to adjust residential mortgage prices in response to the Major Bank Levy.

A final report is due to be delivered after 30 June 2018.

New competition mandate for ASIC

At the ASIC Annual Forum on 19 March 2018, the Minister for Revenue and Financial Services Kelly O'Dwyer [announced](#) that the Federal Government had settled on a new Statement of Expectations for ASIC which includes a competition mandate, and that the Government would legislate to add consideration of competition to ASIC's mandate. The new mandate will require ASIC to consider the effect that its work and the exercise of its powers will have on competition in the financial system. The Minister said that "ultimately it is competition – not regulation – that is the best means of ensuring consumers get value for money in financial services."

FINANCIAL ADVICE

Conflicts of interest report

ASIC [released](#) a report on 24 January 2018 (REP 562) which looks at the products recommended by ANZ, CBA, NAB, Westpac and AMP financial advice licensees, and the quality of advice provided on in-house products.

ASIC found that 79% of the financial products on approved products lists were external products and 21% were internal or 'in-house' products, but 68% of client funds were invested in in-house products.

ASIC also conducted a review of a sample of advice files and found that for 75% of the files the advisers did not "demonstrate compliance" with the duty to act in the best interests of clients. ASIC claims that 10% of the advice reviewed was "likely to leave the customer in a significantly worse financial position." ASIC said that it "will ensure that appropriate customer remediation takes place."

New professional standards for financial advisers

ASIC has created a new [page](#) on its website with information for financial advisers on the new professional standards requirements.

Death nomination forms

ASIC [says](#) that there is a widespread practice among financial advisers of 'witnessing' or having staff members 'witness' client signatures on binding death nomination forms without being in the presence of the signatory. In other cases, forms have been backdated. ASIC notes that each of these practices fails to comply with the law, and may result in the nominations being invalid. It has put the industry on notice that witnessing requirements must be observed.

FINANCIAL MARKETS

Crowdfunding licensees

ASIC [reported](#) on 11 January 2018 that 7 companies had been issued with Australian financial services licences to act as intermediaries able to provide a crowd-sourced funding service.

ASIC reports on credit rating agencies

Market-wide surveillance of credit rating agencies has been conducted by ASIC. The report of its activity (REP 566) [released](#) on 15 February 2018 makes a number of recommendations.

Corporate finance regulation – July to December 2017

On 26 February 2018 ASIC [released](#) its report REP 567 on the regulation of corporate finance for the period July to December 2017. The report discloses that during this period, there were

329 disclosure documents lodged with ASIC, raising over \$5 billion, with emerging market issuers lodging approximately 8.5% of these documents. There were also 72 initial public offering disclosure documents during the period, a 20% increase from 1 January to 30 June 2017.

Updated ASIC guidance on client money and OTC derivatives

ASIC has [released](#) an updated Regulatory Guide 212 relating to client money when dealing in OTC derivatives. The updated guide reflects changes to the law on client money reporting and use of client money.

FINANCIAL SYSTEM

The Royal Commission

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has commenced hearings, with an initial public hearing on 12 February 2018, and then a round of public hearings from 13 to 23 March.

The Commissioner, The Honourable Kenneth Madison Hayne AC QC, is overseeing the public hearings, and is due to submit an interim report no later than 30 September 2018, with a final report by 1 February 2019.

As of 29 March, the Commission had received 3071 submissions, 69% of which involved the banking sector, 9% on superannuation, and 5% for general insurance, intermediaries and financial advice.

The first round of hearings examined the treatment of customers by financial institutions regarding credit products, focusing primarily on car finance, residential mortgages, and credit cards.

In its investigation into consumer lending, the Commission has utilised a case study approach for the public hearings. The categories and specific case studies are as follows:

- Residential mortgages: NAB – introducer program and fraudulent loan applications; Aussie Home Loans - fraudulent brokers and broker arrangements; and CBA – accreditation of brokers and broker arrangements.
- Car finance: Westpac/St George - car finance practices; and ANZ/Esanda - car finance practices.
- Credit cards: Westpac - unsuitable credit card limit increases; and Citi – imposition of international transaction fees.
- Add-on insurance: CBA - credit insurance in connection with home loans, personal loans and credit cards.
- Credit offers: ANZ - unsuitable pre-approved overdraft offers.
- Account administration: ANZ - account administration errors; and CBA – unsuitable overdraft facilities and failure of automated systems.

In closing submissions following the hearings on these matters, counsel assisting the Commission said that it was open to the Commissioner to make findings of misconduct in relation to a number of matters that were dealt with in the hearings, and invited the institutions involved to make written submissions in response.

Transcripts and witness lists for each day of the public hearings can be found [here](#).

The Commission has also published several background papers which outline the activities and trends within the market for each category which the public hearings concern, and can be found [here](#).

The second round of public hearings will begin on 16 April and will focus on the financial

planning and wealth management industry.

You can watch live streaming of the Commission [here](#).

Third report of review of the Four Major Banks

The third report of this Parliamentary review by the Standing Committee on Economics was [tabled](#) on 7 December 2017. The committee recommends:

- that banks be required to give merchants the ability to send tap-and-go payments from dual-network debit cards through the channel of their choice, and that if the banks have not facilitated this recommendation by 1 April 2018, the Payments System Board should take regulatory action to require this to occur;
- the ACCC, as a part of its inquiry into residential mortgage products, analyse the repricing of interest-only mortgages that occurred in June 2017;
- that the Government introduce legislation to mandate participation in comprehensive credit reporting as soon as practicable; and
- that the Attorney-General review the major banks' AML/CTF Act threshold transaction reporting obligations in light of the issues identified in the Commonwealth Bank case.

New APRA powers over non-bank lenders

The *Treasury Laws Amendment (Banking Measures No. 1) Act 2018* (Cth) grants new powers to APRA to deal with developments in non-ADI lending that pose a risk to financial stability.

APRA's new rule making powers will allow APRA to make rules and give directions relating to the provision of finance by non-ADI lenders where APRA has identified material risks of instability in the Australian financial system as a consequence of their lending activities. It is not expected that APRA will prudentially regulate and supervise non-ADI lenders, but rather that the power over non-ADI lenders will stay dormant until the provision of finance by non-ADI lenders materially contributes to the risk of financial instability.

The amending Act also broadens APRA's ability to gather data from all relevant non-ADI lenders under the *Financial Sector (Collection of Data) Act 2001* (Cth), which requires certain corporations to register with APRA for data collection purposes. The amendments to this Act will mean that any corporation that engages in the provision of finance in the course of carrying on a business in Australia, or which is the subject of a determination by APRA, will be required to register.

Strengthening APRA's crisis management powers

APRA now has additional powers for crisis resolution and resolution planning in relation to regulated entities including ADIs and insurers.

The *Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018* (Cth) received [assent](#) on 5 March 2018 and is now in effect. The Explanatory Memorandum explains that the Act amends a number of existing laws in relation to crisis resolution to:

- enhance APRA's statutory and judicial management regimes to ensure their effective operation in a crisis;
- enhance the scope and efficacy of APRA's existing directions powers;
- improve APRA's ability to implement a transfer of regulated entities;
- ensure the effective conversion and write-off of capital instruments to which the conversion and write-off provisions in APRA's prudential standards apply;
- enhance stay provisions and ensure that the exercise of APRA's powers does not trigger certain rights in the contracts of relevant entities within the same group;
- enhance APRA's ability to respond when an Australian branch of a foreign regulated entity may be in distress;

- enhance the efficiency and operation of the Financial Claims Scheme and ensure that it supports the crisis resolution framework; and
- enhance and simplify APRA's powers in relation to the wind up or external administration of regulated entities, and other related matters.

ASIC levies

On 28 March 2018 ASIC [published](#) estimates of what regulated sectors will be required to pay when industry funding invoices are issued in January 2019.

All organisations regulated by ASIC must log on to a new online ASIC portal between July and September 2018 to submit or validate their business activity metrics. ASIC will send a letter to each person listed as the ASIC contact in June 2018. The letter will contain a unique security key for the portal, and detailed information on the process.

BEAR – size of ADI

The Banking Executive Accountability Regime (**BEAR**) includes a power for the Minister to define small, medium and large ADIs. Some parts of the BEAR will apply differently depending on an ADI's size. These include the commencement date, deferral of variable remuneration, and maximum civil penalties. Treasury has [released](#) a draft legislative instrument which provides that a small ADI would have less than or equal to \$10 billion in assets; a medium ADI would have between \$10 billion and \$100 billion in assets; and a large ADI would be any ADI with more than \$100 billion in assets. Assets would be measured on a three year average of total resident assets. Comments are due by 20 April 2018.

FINTECH

Open Banking

The Federal Government announced in the 2017-18 Budget that it would introduce an 'Open Banking' regime in Australia. Under Open Banking, banks will have to share product and customer data with customers and third parties, if the customer gives consent. A review was commissioned in July 2017 and the review [delivered](#) its report in December 2017. The findings of the review are likely to form the basis of legislation to create Open Banking in Australia. The review recommends that:

- Open Banking be legislated through amendments to the *Competition and Consumer Act 2010* (Cth) and regulated by the ACCC.
- There be a Consumer Data Right set out in legislation, which could be extended in the future beyond banking to other sectors of the economy.
- Customer consent under Open Banking must be explicit, fully informed and able to be permitted or constrained according to the customer's instructions.
- Open Banking should have specific Rules.
- Open Banking should require technical Standards that specify how participants will connect and how they will meet the Rules. These Standards should be determined by a Data Standards Body, in conjunction with the regulators.
- The Data Standards Body would also specify designated security standards for sharing data.
- Data holders and data recipients would have to comply with a set of standards (including security standards) determined by the regulators of the system. This accreditation system should be tiered, based on the risk of the data set and the participant, and a list of accredited participants should be published in an address book.
- The following data should not be in scope: data supporting an identity verification check; any data that would materially increase the risk of customer identity theft; aggregated data; and transformed data.
- 12 months be given between the final government decision on Open Banking and commencement.
- There should be a phased commencement beginning with the four major banks.

- Transaction data before 1 January 2017 would not be subject to the regime.

UK-Australia Fintech Bridge

The UK-Australia FinTech Bridge is an [agreement](#) between the Governments of Australia and the United Kingdom announced in March 2018. It provides for collaboration between the two Governments to identify emerging fintech trends and policy issues, sharing of Australian and UK regulatory expertise, facilitating the entry of fintech start-ups into each jurisdiction's regulatory sandbox, and exploring opportunities for quicker licence processing for fintech firms already licensed or authorised in the other country. It also provides for trade and investment promotion agencies supporting fintech firms looking to expand overseas, and promoting engagement between Australian and UK fintech sector bodies.

Report on fintech lending to small business

On 28 February 2018, the Australian Small Business and Family Enterprise Ombudsman (**ASBFEO**), FinTech Australia and theBankDoctor.org [released](#) a report outlining the steps taken by fintech lenders to increase transparency and disclosure. The report makes recommendations on best practice and identifies commitments to action, including:

- the development of an industry Code of Conduct to cover fintech balance sheet lenders offering unsecured business loans by June 2018;
- expanding this Code of Conduct to other fintech lending and finance products over time;
- fintech lenders to agree to the contents of an easy-to-understand contract summary page by June 2018; and
- the ASBFEO and theBankDoctor.org to work together to produce a guide to assist small business owners better understand borrowing from a fintech lender, to be published by June 2018.

Regulatory sandbox exemptions Bill

The *Treasury Laws Amendment (2018 Measures No. 2) Bill 2018* (Cth) [introduced](#) on 8 February 2018 amends the *Corporations Act 2001* (Cth) and the *National Consumer Credit Protection Act 2009* (Cth) (the **NCCP Act**) to allow regulations for exemptions from the Australian financial services licence and Australian credit licence requirements, for the purpose of testing financial and credit products and services, subject to conditions.

MANAGED INVESTMENTS

Asia Region Funds Passport

Treasury [released](#) for comment a draft *Corporations Amendment (Asia Region Funds Passport) Bill 2017* (Cth) and related explanatory materials on 20 December 2017. Submissions have now closed. The Asia Region Funds Passport is a planned common framework for cross border issuing of managed investment funds. Australia, Japan, Korea, New Zealand and Thailand are signatories to the Passport's Memorandum of Cooperation.

MUTUALS

Small mutuals enabled to call themselves banks

[Amendments](#) to the *Banking Act 1959* (Cth) made by the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018* (Cth) remove the restriction on ADIs assuming or using the words bank, banker or banking in relation to their financial business. This amendment will allow mutual ADIs of any size to use these words, including in their name. The amendments take effect on 5 May 2018.

PAYMENTS

NSW gift cards – 3 year minimum expiry

The *Fair Trading Amendment (Ticket Scalping and Gift Cards) Act 2017* (NSW) amends the *Fair Trading Act 1987* (NSW) to introduce a mandatory minimum expiry period of 3 years for gift cards sold to a consumer in New South Wales, and a ban on post-purchase administration fees.

A gift card is defined as “a card or voucher (in hard copy or electronic form) that is redeemable for goods or services in New South Wales.”

The provisions do not apply to any gift card sold prior to the commencement of the new law on 31 March 2018, and only apply to gift cards sold to a consumer who is in New South Wales at the time of sale or sold to a consumer who provides a New South Wales address in connection with the sale.

The new law does not apply to any class of gift cards that may be prescribed by the regulations, and the *Fair Trading Regulation 2012* (NSW) has been amended to include exemptions. New regulation 23A provides that the new provisions do not apply to:

- a card or voucher supplied in substitution for goods returned to the supplier of the goods;
- a prepaid card or voucher redeemable for phone credit, internet access or the like;
- a debit card, credit card, prepaid travel card or any similar product supplied by a financial institution; or
- a card or voucher supplied as part of a customer loyalty program.

PRIVACY

Notifiable data breaches commencement

On 22 February 2018, the new requirement to notify eligible data breaches commenced. Official guidance can be accessed [here](#).

Mandatory comprehensive credit reporting – draft legislation released

On 8 February 2018, Treasury [released](#) exposure draft legislation for mandatory comprehensive credit reporting (CCR). Submissions closed on 28 February. The plan to introduce mandatory CCR was announced by the Federal Government in November 2017.

Included with the materials released for consultation is a ‘ready reckoner’ summary of the proposed reforms, which can be downloaded [here](#)

The CCR regime will initially apply to large ADIs (more than \$100 billion resident assets) and subsidiaries that hold an Australian credit licence. The Bill will amend the NCCP Act to impose an obligation on licensee credit providers to supply credit information to an eligible credit reporting body. Regulations will be able to extend the regime to other credit providers. The first tranche of CCR data must be supplied within 90 days from 1 July, including information on 50% of open and active accounts. The second tranche must be made within 90 days of 1 July next year, and include information on the remaining accounts and any new accounts opened since then. Updates will have to be provided within 20 days of when the update occurred or account opened. Only consumer credit accounts are affected.

There will be a principle of reciprocity, meaning that a credit reporting body cannot share information with a credit provider unless the credit provider has shared comprehensive credit information. However the principles of reciprocity in the Bill do not apply if the credit reporting body and the credit provider are signatories to the Principles of Reciprocity and Data Exchange (those Principles would then apply instead).

Repayment history information must be supplied for accounts for the three months preceding when the obligation to supply is first triggered. The data must be stored by credit reporting body in Australia or with a "certified cloud service provider".

Because the legislation will come under the NCCP Act, rather than the *Privacy Act 1988* (Cth), the enforcement of mandatory CCR will be vested in ASIC rather than the Office of the Australian Information Commissioner. ASIC will have its existing powers extended to mandatory CCR so that it can monitor and ensure compliance with the information supply requirements and non-disclosure restrictions.

PRUDENTIAL STANDARDS

APRA policy priorities

APRA has [released](#) an information paper on its proposed policy priorities for 2018.

In the area of banking, these include consultation on the revision of prudential requirements for minimum ADI capital, and implementation of the BEAR. APRA also plans to finalise its phased approach to licensing new ADIs, and updating prudential standards to ensure that they are fit for purpose.

With respect to insurance, key initiatives include finalising new risk management standards and governance standards for private health insurers, and completing work on the role of the appointed actuary. APRA also intends to update the reinsurance framework for life insurance.

In the area of superannuation, APRA will consult on strengthening superannuation member outcomes and undertake a comprehensive post-implementation review of the superannuation prudential and reporting frameworks.

APRA progress report on CBA prudential inquiry

On 1 February 2018, APRA [released](#) the Progress Report by the Panel appointed by APRA to conduct a prudential inquiry into the Commonwealth Bank of Australia (CBA). The report states that "issues of governance, culture and accountability in a large financial institution are complex and interwoven, and the Panel does not consider it appropriate to draw conclusions, even preliminary ones, before this work is completed and all relevant evidence collected and carefully evaluated. Accordingly, the Panel will reserve its substantive findings and recommendations for inclusion in the Final Report, which will be provided to APRA by 30 April 2018."

APRA proposes revisions to capital framework

On 14 February 2018 APRA [released](#) two discussion papers on proposed revisions to the capital framework for ADIs. The proposed changes include:

- lower risk weights for low LVR mortgage loans;
- higher risk weights for interest-only loans and loans for investment purposes;
- amendments to the treatment of exposures to small-to-medium-sized enterprises; and
- a single replacement methodology for the current advanced and standardised approaches to operational risk.

The paper also proposes to simplify the capital framework for small ADIs.

Prudential standards for private health insurers

APRA has reviewed the prudential framework for private health insurers and has [proposed](#) amendments to the prudential framework applying to them as it relates to governance, fit and proper, audit and disclosure. This includes replacing the current Prudential Standard HPS 510 Governance (HPS 510) with the cross-industry Prudential Standard CPS 510 Governance (CPS 510), extending the cross industry Prudential Standard CPS 520 Fit and Proper (CPS 520) to

private health insurers, introducing a new Prudential Standard HPS 310 Audit and Related Matters (**HPS 310**), which would be aligned to the audit prudential standards applying to other APRA-regulated institutions, revoking Prudential Standard HPS 350 Disclosure to APRA (**HPS 350**), and updating Prudential Standard HPS 001 Definitions (**HPS 001**) to include terminology referenced in CPS 510, CPS 520 and HPS 310.

APRA review of executive remuneration practices

On 4 April 2018, APRA [released](#) results of its review of remuneration practices at large financial institutions. APRA found that there was "considerable room for improvement" in the design and implementation of remuneration structures. It found that remuneration frameworks and practices did not consistently and effectively promote sound risk management and long-term financial soundness. APRA said that it will consider ways to strengthen its prudential framework.

Prudential standard on cyber security

APRA released a package of measures on 7 March 2018 intended to respond to the threat of cyber attacks. This includes a proposed prudential standard on information security, CPS 234. The proposed prudential standard would require regulated entities to clearly define the information security related roles and responsibilities of the board, senior management, governing bodies and individuals, and to maintain information security capability commensurate with the size and extent of threats to information assets, and to enable the continued sound operation of the entity. Regulated entities would also be required to implement information security controls to protect information assets, and undertake systematic testing and assurance regarding the effectiveness of those controls. It is proposed that they would also be required to have robust mechanisms in place to detect and respond to information security incidents in a timely manner, and to notify APRA of material information security incidents. Submissions on the package are open until 7 June 2018, and APRA proposes to finalise the standard by the end of 2018.

SUPERANNUATION

Superannuation early release

The *Treasury Laws Amendment (2018 Measures No. 1) Act 2018* (Cth) has been [passed](#) by the Federal Parliament and received assent on 29 March 2018. Among other things, the Act amends the superannuation laws to enable the Commissioner of Taxation to pay certain superannuation amounts directly to individuals with a terminal medical condition.

Superannuation taxation integrity measures

In January 2018 Treasury [released](#) a Consultation Paper covering two superannuation taxation measures: including a member's share of the outstanding balance of a limited recourse borrowing arrangement in their total superannuation balance; and ensuring that non-arm's length expenditure is taken into account when determining whether the non-arm's length income taxation rules apply to a transaction. The consultation period has now closed.

Superannuation Guarantee Integrity Package

On 24 January 2018, Treasury [released](#) exposure draft legislation to give effect to the Federal Government's Superannuation Guarantee Integrity Package. The draft Bill increases the powers of the Australian Taxation Office with respect to employers who fail to comply with their superannuation guarantee obligations. It also extends Single Touch Payroll to all employers, facilitates more regular reporting by superannuation funds, and streamlines employee commencement processes. Submissions closed on 16 February 2018.

Extended transition period for superannuation and retirement calculators

ASIC has now [extended](#) to 1 July 2019 the deadline for when providers of retirement and

superannuation calculators must comply with the requirement that generic financial calculators must account for inflation.

AML/CTF

Rule amendments

The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2017 (No. 4)* ([2017/4](#)) and *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (No. 1)* ([2018/1](#)) have been registered and have now commenced.

2017/4 adds a new Chapter 75 to the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (the **AML/CTF Rules**). Chapter 75 specifies that the AUSTRAC CEO may exempt reporting entities from particular sections of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the **AML/CTF Act**) where a requesting officer of an eligible agency reasonably believes that providing a designated service to a customer would assist the investigation of a serious offence.

2018/1 amends the following Chapters of the AML/CTF Rules: Chapters 1 (Definitions), 4 (Customer Due Diligence), 8 and 9 (AML/CTF Programs), 30 (Disclosure Certificates), and 36 (Corporate Structures). 2018/1 implements a number of recommendations of the AML/CTF statutory review which do not require any changes to be made to the AML/CTF Act. They also address some deficiencies in Australian AML/CTF law identified by the FATF.

The *Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (No. 2)* ([2018/2](#)) has also been registered and commenced on 3 April 2018. 2018/2 operationalises the amendments made to the AML/CTF Act by the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017* (Cth) by adding Chapter 76, and amending Chapters 3, 4, 10, 12, 18, 19, 37, 45, 57, 70 and 74. It also removes Chapters 44 and 53 from the AML/CTF Rules.

Chapter 76 covers registration on the Digital Currency Exchange Register for digital currency exchange businesses. From 3 April 2018 to 2 October 2018, transitional arrangements will apply to existing and new digital currency exchange providers, to allow them some time to comply with their new AML/CTF obligations. During this time certain enforcement actions will not be taken by AUSTRAC if the reporting entity meets certain conditions, including taking “reasonable steps” to comply with the requirements of the AML/CTF Act and Rules.

DISPUTES AND ENFORCEMENT

AFCA

The Bill to establish the Australian Financial Complaints Authority (**AFCA**) scheme – the *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018* (Cth) – [passed](#) on 14 February 2018 and received assent on 5 March 2018.

Also on 5 March 2018, ASIC [released](#) draft updated Regulatory Guide 139, *Oversight of AFCA*, for public consultation.

The Minister for Financial Services, Kelly O'Dwyer, has [announced](#) that AFCA will commence operations no later than 1 November 2018.

ASIC enforcement report

ASIC [published](#) its latest enforcement report for the period of July to December 2017 on 28 February 2018. During this period ASIC says that there was \$21.7 million in civil penalties, \$94.4 million in compensation and remediation for investors and consumers, and \$40.5 million in community benefit fund payments. The report also includes a summary of ASIC's work on tackling loan fraud.

ASIC proceedings against CBA for BBSW conduct

ASIC [commenced](#) legal proceedings in the Federal Court against the CBA for unconscionable conduct and market manipulation in relation to CBA's involvement in setting the bank bill swap reference rate (**BBSW**) in 2012.

Latitude Insurance refunds

ASIC [reports](#) that Hallmark General Insurance Company Ltd (trading as Latitude Insurance) is refunding approximately \$1.1 million to 905 customers in relation to consumer credit insurance (**CCI**).

Between October 2011 and June 2014, Latitude Insurance sold involuntary unemployment insurance to personal loan customers who were ineligible to claim because they did not work the required minimum 20 hours per week. Between May 2014 and February 2017, the new partly automated claims assessment process of Latitude Insurance incorrectly denied claims to credit card CCI customers. Latitude Insurance is refunding premiums and interest to personal loan involuntary unemployment insurance customers who were ineligible to claim, and paying claim amounts plus interest to credit card CCI customers who had incorrectly denied claims.

More add-on insurance premium refunds

Allianz Australia Insurance Limited (**Allianz**) will refund \$45.6 million to 68,000 customers for add-on insurance sold through car dealerships between 1 December 2010 and 30 November 2017. The refund program covers four Allianz add-on insurance products: Motor Equity Insurance (a form of Guaranteed Asset Protection (**GAP**) insurance), Loan Protection Insurance, Tyre and Rim Insurance, and Warranty Insurance products. ASIC [claims](#) that the products sold were of little or no value to consumers. Allianz will offer to refund premiums paid by customers for policies with little or no value, and offer a partial refund to customers sold more cover than they needed. Allianz will also make a community benefit payment of \$175,000 to a financial literacy organisation.

Suncorp's MTA Insurance is also providing refunds for add-on insurance. The Suncorp program will involve over 41,000 customers and \$17.2 million for GAP insurance provided by MTA Insurance and purchased through car dealerships between 2009 and 2017. In ASIC's [view](#), the insurance was mis-sold for a number of reasons:

- customers would be unlikely to be able to claim on the insurance;
- cover was unnecessary as it duplicated replacement vehicle cover held by customers under their comprehensive car insurance policies;
- customers were sold a more expensive level of GAP cover than they needed; and
- rebates were not paid in many cases when the customer paid out their loan early, even though cover had ended.

ASIC also found that MTA CCI included life cover sold to young people who were unlikely to need the cover if they had no dependants.

MTA Insurance is refunding all customers sold GAP policies on new cars that remain in force as at 1 September 2017 and will offer to refund life and trauma insurance premiums to customers who were 25 years old or less when the policy was sold to them (unless they elect to keep the cover in place). It will also provide rebates to GAP customers who repaid their loan early (where they also had a CCI policy) and pay a \$50,000 community benefit payment.

ASIC also [announced](#) in January that National Warranty Company (**NWC**) will refund approximately \$4.9 million to 6,367 car warranty customers. ASIC says that NWC commission incentives breached the prohibition on conflicted remuneration.

Radio Rentals responsible lending breaches

ASIC [launched](#) civil penalty proceedings in January 2018 against Thorn Australia Pty Ltd (**Thorn**), the operator of the Radio Rentals consumer lease business. Thorn admitted to contraventions of responsible lending obligations by Radio Rentals in respect of 278,683 consumer leases entered into in the period from 1 January 2012 to 1 May 2015. ASIC and Thorn are making joint submissions that the appropriate penalty for these contraventions is \$2 million. The penalty will be determined by the Court. ASIC has also accepted an enforceable undertaking from Thorn, to further address ASIC's responsible lending concerns and to address concerns about accepting and retaining excess payments from customers that were more than the lease required. Thorn has already returned approximately \$11.8 million of the \$13.8 million to customers who overpaid. Thorn has also agreed to introduce a new plain English lease contract by 1 June 2018 and to work with ASIC to improve communications with customers whose leases are ending or have ended, in relation to end of lease options.

Esanda responsible lending breaches

ASIC [commenced](#) civil penalty proceedings in the Federal Court against ANZ in relation to alleged contraventions of the responsible lending obligations for car loans approved by Esanda from three broker businesses. ASIC alleged that ANZ failed to meet its responsible lending obligations when relying only on payslips included in 12 car loan applications to verify the consumer's income, when it knew that payslips could be easily falsified, and it had reason to doubt the reliability of information from the particular broker businesses. ANZ admitted the contraventions. ASIC and ANZ made joint submissions that the appropriate penalty to be paid by ANZ should be \$5 million. On 15 February 2018, the Federal Court made [orders](#) that ANZ pay the \$5 million and also pay ASIC's legal costs of \$120,000.

Red Balloon penalty for excessive payment surcharges

Red Balloon Pty Ltd has paid penalties totalling \$43,200 following the issue of four infringement notices by the ACCC for [alleged](#) breaches of the new excessive payment surcharges laws in the *Competition and Consumer Act 2010* (Cth).

ClearView refunds

Following a [review](#) of its sales practices by ASIC, ClearView Life Assurance Limited has agreed to refund approximately \$1.5 million to consumers and to stop selling life insurance direct to consumers. According to ASIC, ClearView sales staff made misleading statements to customers about the cover, premiums and the effect of pre-existing medical conditions, and did not clearly obtain consumer consent to purchase the cover. ASIC also alleges that ClearView engaged in pressure selling tactics. ClearView will also offer a sales call review to eligible consumers and remediate if there is evidence of poor conduct, and engage an independent expert to review the consumer remediation program.

RAA insurance pays penalties

RAA Insurance has paid penalties of \$43,200 in response to infringement notices [issued](#) by ASIC for allegedly misleading representations made in television advertisements in South Australia. The advertisements promoted a "lifetime vehicle replacement" benefit in RAA's comprehensive car insurance policy. There were conditions attached to this benefit which ASIC believed were not adequately disclosed or explained. While there was a disclaimer, it was in fine print, and only displayed for a short period of time, and there was distracting audio-visual content in the advertisement while the disclaimer was being displayed.

Credit repair business pays penalties

Clear Credit Solutions Pty Ltd, a credit repair business, has paid penalties of \$21,600 following

infringement notices [issued](#) by ASIC which alleged that the company had made false or misleading representations on its website and in its sales scripts.

Insuranceline funeral insurance refunds

TAL Direct Pty Ltd (TAL) is offering refunds totalling \$900,000 to 1,200 Insuranceline funeral insurance customers. TAL [reported](#) to ASIC that it had failed to switch off annual cost of living increases to premiums and cover for some customers, contrary to the terms of the policies.

ASIC winds up companies for unpaid fines

ASIC has [obtained](#) orders to wind up the Fast Access Finance companies which were the subject of fines imposed by the Federal Court in March 2017, when the Court found that the companies had engaged in credit activities without holding an Australian credit licence. The Fast Access Finance companies operated a scheme where diamond sales were used as sham transactions for small value loans.

ASIC has also [obtained](#) orders to wind up Channic Pty Ltd and Cash Brokers Pty Ltd for unpaid fines. The Federal Court imposed fines totalling \$776,000 plus payment of ASIC legal costs in April 2017 after an action was brought by ASIC for breaches of credit laws. The director of the companies, Mr Colin Hulbert, has declared himself bankrupt.

ANZ refunds business credit card customers

ANZ has [agreed](#) to refund \$10.2 million to over 52,000 business credit card accounts. ANZ reported to ASIC that for some customers with these accounts, ANZ had failed to disclose or incorrectly disclosed interest rates, the interest free period, the annual fee, and overseas transaction fee information.

Westpac refunds credit card customers

Following concerns [raised](#) by ASIC in 2016 in relation to its credit card limit increase practices, Westpac has to date provided approximately \$11.3 million in remediation to around 3,400 customers. Westpac reviewed credit limit increases previously provided to customers where they subsequently experienced financial difficulty. An independent expert was engaged by Westpac to review the remediation program.

Advice compensation continues

ASIC [reports](#) that Australia's five largest banking and financial services institutions have paid a further \$21.4 million in compensation to customers resulting from non-compliant conduct by financial advisers. This brings the total amount of compensation paid to date to \$51.4 million. The compensation arises from issues identified in ASIC's March 2017 report on financial advice in large institutions (REP 515).

ANZ EU

ANZ has [given](#) an enforceable undertaking to ASIC relating to a failure to provide documented annual reviews to more than 10,000 Prime Access customers in the period from 2006 to 2013. ANZ has agreed to pay a community benefit payment of \$3 million and to provide an audited attestation that the bank has since 2014 provided such reviews to customers who are entitled to them, as well as an audited attestation as to the improvements made by the bank to its compliance systems and processes.

Bookup provider did not act unconscionably

In *Kobelt v Australian Securities and Investments Commission* [\[2018\] FCAFC 18](#) the Full Federal Court upheld an appeal by a 'bookup' provider against a finding that he had acted unconscionably in providing bookup arrangements to Aboriginals in a remote part of South

Australia.

ACCC sues Equifax

On 16 March 2018 the ACCC [began](#) proceedings in the Federal Court against Equifax, a credit reporting body, alleging breaches of the Australian Consumer Law. The ACCC alleges that Equifax made a range of false or misleading representations to consumers, including that its paid credit reports were more comprehensive than the free reports, and that consumers had to buy credit reporting packages for it to correct information held about them, or to do so quicker. The ACCC also alleges that the Equifax subscription agreement provided for automatic renewal annually unless the consumer opted out in advance, and that this renewal term was an unfair contract term and void under the Australian Consumer Law. The ACCC claims that Equifax acted unconscionably in its dealings with vulnerable consumers, by making false or misleading representations and using unfair tactics and undue pressure when dealing with people in financial hardship.

Penalties for Storm Financial directors

In *Australian Securities and Investments Commission v Cassimatis (No 9)* [\[2018\] FCA 385](#), Dowsett J imposed penalties of \$70,000 each on Emmanuel and Jule Cassimatis, the former directors of Storm Financial, in respect of breaches of their duties as directors, and disqualified them from managing corporations for 7 years.

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