



DWYER HARRIS



# FINANCIAL SERVICES AND CREDIT

## QUARTERLY UPDATE

October 2018

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## CONSUMER CREDIT

### ASIC review of reverse mortgages

The Australian Securities and Investments Commission (ASIC) [published](#) the findings of its review into the reverse mortgage market on 28 August 2018. REP 586 *Review of reverse mortgage lending in Australia* studied data on over 17,000 reverse mortgages, including 111 consumer loan files.

The report found that borrowers generally achieve their immediate objectives without a risk of negative equity, but that some borrowers may not have recognised the impact of equity erosion on their possible future needs. ASIC recommends that lenders should document more detailed enquiries about consumers' future needs and objectives, including aged care and inheritance, and that applications and questions in loan interviews should be framed in ways that facilitate genuine discussion and reflection by the borrowers about these issues. If the borrower cannot afford or locate paid financial guidance, ASIC says that lenders should refer them to free information sources where appropriate.

ASIC's report noted that the market for reverse mortgages is highly concentrated and that the products were generally more expensive than standard home loans.

ASIC recommends that lenders implement training and have effective procedures to detect and address possible instances of financial elder abuse, and should enquire and record whether the consumer needs tenancy protection, or whether the loan should have several borrowers.

ASIC also found that certain standard terms in reverse mortgage contracts could be potentially unfair, including "entire agreement" clauses, unilateral variation clauses and non-monetary default clauses, and recommends that lenders review their terms for potentially unfair terms.

### Credit cards – 3 years to pay off

Under amendments to the credit legislation taking effect on 1 January 2019, a credit card contract will be deemed unsuitable if when it is assessed, the consumer would not be able to pay it off within the period prescribed by ASIC. A period of 3 years has now been [prescribed](#) by ASIC. ASIC has also [issued](#) a report (REP 590) which gives some guidance on assumptions to be made when assessing if the consumer can repay the credit limit within 3 years.

### Flex commissions

ASIC has made last minute changes to the ban on flex commissions which will take effect on 1 November 2018. In the *ASIC Credit (Amendment) Instrument 2018/706*, ASIC has amended the definition of a home loan (which is exempt from the ban) to be consistent with the broader range of purposes relating to residential property that result in a contract being regulated by the credit legislation. It also excludes from the ban benefits that are paid to a person acting in the capacity of a mortgage manager and exempts the ban from applying to a credit contract or consumer lease that was entered into before either the instrument commences, or before 1 February 2019 as a result of either an offer that was made by the credit provider or lessor before the instrument commences, or an acceptance before 1 February 2019 by the credit provider or lessor of an offer made by the consumer before the instrument commences.

## FINANCIAL ADVICE

### Continuing professional development requirements

The Financial Adviser Standards and Ethics Authority (FASEA) in July 2018 [released](#) proposed guidance on continuing professional development (CPD) requirements for financial advisers which includes a minimum of 50 hours CPD per year.

## Professional standards reforms

On 1 August 2018 ASIC [announced](#) changes to reporting dates for transition to the new financial adviser professional standards. Those financial advisers listed on the Financial Advisers Register between 1 January 2016 and 1 January 2019 will be recognised as an existing provider. If the adviser is not recognised as an existing provider, the adviser will have to pass an exam and complete an approved qualification by 1 January 2019 to work as a financial adviser, and also undertake a year of work and training. However existing providers will have until 1 January 2021 to pass the exam and until 1 January 2024 to complete an approved qualification.

## ASIC guidance on code of ethics compliance schemes for financial advisers

ASIC has [released](#) guidance on its proposed approach to approving and overseeing compliance schemes for financial advisers (RG 269). From 1 January 2020, financial advisers must comply with a code of ethics and be covered by an ASIC-approved compliance scheme which will monitor and enforce compliance with the code of ethics. The regulatory guide explains ASIC's process and criteria for determining whether to grant approval of a compliance scheme.

## ASIC review of fraud protection systems for deposit accounts

ASIC has [announced](#) the findings of a review (REP 584) into the policies, procedures and controls that banks have in place to prevent fraud and unauthorised transactions for consumers who have deposit accounts that can be operated by their adviser. These accounts are often marketed as 'cash management accounts'. ASIC said that its review did not identify concerning levels of fraud, but found that banks could do more to manage the risks to customers associated with third party access to money in customers' accounts. The banks involved in the review have agreed to change their current practices by:

- ensuring account application forms adequately explain to customers that they will be giving the adviser authority to operate on their account;
- sending follow up communications to customers after the account is opened with details of the authority that has been given;
- better monitoring of the advisers' use of these accounts and their transaction requests, and investigating any suspicious requests; and
- considering the circumstances of any fraud that occurs using these accounts and, where appropriate, remediating a customer who has lost funds due to unauthorised transactions by their adviser.

## ASIC acts on fees disclosure and renewal notice compliance breaches

ASIC [announced](#) on 12 October 2018 that it was reviewing compliance with requirements for Fee Disclosure Statements and Renewal Notices in the financial advice sector in response to a number of breach reports from licensees. ASIC will provide its findings in 2019. ASIC said that it was also investigating substantial breaches of these obligations with a view to taking enforcement action, and supervising remediation programs which require licensees who reported failures to issue compliant Fee Disclosure Statements to customers and/or refund and compensate customers for the ongoing service fees charged.

## FINANCIAL MARKETS

### ASIC review of exchange traded products

ASIC has [reviewed](#) the exchange traded products (ETP) market in Australia. ASIC found that the market is "generally performing well, and ETPs are meeting the relatively low cost and

liquidity expectations of investors.” The main issue identified by ASIC was the potential for the bid/offer spread to temporarily widen, leading to investors paying a spread that would be considered too high, and undermining the relatively low cost proposition of some ETPs. ASIC says market operators and issuers should play a more proactive role in monitoring the performance of ETPs. Where they observe spreads widening unreasonably, they should take appropriate action. ASIC recommends that ETP issuers publish the indicative net asset value with a frequency that enables investors and financial advisers to make more informed decisions.

## FINANCIAL SERVICES

### Design and distribution obligations and product intervention power

On 20 July 2018 Treasury [released](#) for public consultation a revised exposure draft of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* (Cth). This follows feedback from a previous round of consultation.

The design and distribution obligations and the product intervention powers were recommended by the Financial System Inquiry in 2015.

The design and distribution obligations will require a person offering a financial product to make a “target market determination” (**TMD**) for the product. The TMD must set out the class of retail clients which is the target market for the product. It also must specify any conditions or restrictions on retail distribution of the product, which could include restrictions on advising or dealing in the product. A TMD would as well have a review mechanism, including a regular review period and triggers for when a review would occur. Any member of the public will be able to get a free copy of the TMD. More details can found in our article [here](#).

The product intervention power (**PIP**), unlike the design and distribution obligations, will apply to regulated credit products as well as financial products.

ASIC will be able to use the PIP when it is satisfied that a product or class of products has resulted, or is likely to result, in significant detriment to consumers. The Bill does not define “significant” (or “detriment”), but does include matters that have to be taken into account when deciding whether a detriment is significant:

- the nature and extent of the detriment, including actual or potential financial loss to consumers;
- the impact that the detriment has had, will have or is likely to have, on consumers; and
- any other matter prescribed by the regulations.

The Explanatory Memorandum for the Bill makes clear that a product may cause significant detriment even if it is in full compliance with the law:

*“...a product may cause such detriment even if it complies with all applicable laws. In particular, a product may result in significant detriment to consumers even if a person has complied with all applicable disclosure requirements, and with the person’s design and distribution obligations, in relation to the product.”*

The orders that could be made by exercising the PIP include banning the issue of a product or class of products, directing that a product or class of products only be issued to particular types of consumers, or in particular circumstances, or requiring an appropriate warning or label for distribution of a product. ASIC will not be allowed to make orders requiring a person to meet training standards (other than those already prescribed), order a person to join an external dispute resolution scheme if the person is not required to hold an Australian Financial Services Licence (**AFSL**), or impose requirements in relation to a person’s remuneration (except for remuneration which is conditional on objectives directly related to the product).

An intervention order by ASIC would be limited to 18 months, unless extended with the approval of the Minister, during which time the Government would consider whether it should be made permanent. It would lapse after 18 months if the Government had not made it permanent.

ASIC will have to consult affected parties before making the orders. It will also have to consult with the Australian Prudential Regulation Authority (**APRA**).

## Report on fees and costs disclosure

On 24 July 2018 ASIC [released](#) the external report into Regulatory Guide 97 *Fees and costs disclosure* commissioned in November 2017. The report says that changes to the disclosure regime would be advantageous.

## FINANCIAL SYSTEM

### New Treasury portfolio arrangements

The new Treasurer, Mr Josh Frydenberg MP, [announced](#) the portfolio responsibilities of the new Treasury Ministers on 3 September 2018.

The Treasurer will have responsibility for the development of the budget, economic and fiscal policy, taxation and superannuation policy, responding to the Banking Royal Commission, major foreign investment decisions and international engagement through the G20 and APEC meetings of Finance Ministers, the International Monetary Fund and the World Bank. He will also have primary oversight of ASIC, APRA and the Australian Competition and Consumer Commission (**ACCC**).

Assistant Treasurer Stuart Robert MP will have responsibility for financial services and the day to day management of superannuation, competition and consumer policy, the Australian Bureau of Statistics, fintech, crowd sourced equity funding and assisting across the portfolio on matters including taxation legislation and administration.

Assistant to the Minister for Treasury and Finance Senator Zed Seselja will have responsibility for the not-for-profit and mutuals sector including the Australian Charities and Not-for-profits Commission, Royal Australian Mint, assisting the Treasurer with some aspects of foreign investment and working with the Treasurer on housing policy as well as assisting with matters across the portfolio.

### The Royal Commission

Since our last Quarterly Update in July, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry held hearings on superannuation (Round 5 – from 6 to 17 August) and insurance (Round 6 – from 10 to 21 September) and Commissioner Hayne submitted his Interim Report to the Governor-General on 28 September 2018. The report was tabled by the Government on the same day and is available [here](#). Submissions in response to the Interim Report are due by 26 October 2018.

The Interim Report is in three volumes and there is also an executive summary. The report does not make recommendations but raises a number of policy questions which are summarised in Chapter 10.

The very succinct executive summary says that the two key questions are why the misconduct happened, and what can be done to avoid it happening again. To the first question the Commission says that too often, the answer seems to be greed, because selling became the focus of attention, and staff were measured and rewarded by reference to profit and sales. And then when misconduct was revealed, “it either went unpunished or the consequences did not

meet the seriousness of what had been done”, which points to failings by regulators. To the second question, the Commission refreshingly queries whether passing new laws would only add to legal complexity. It says that the basic ideas, such as acting fairly, are very simple, and asks: “Should the law be simplified to reflect those ideas better?”

The next round of hearings (Round 7) will focus on policy questions arising from the first six rounds. These hearings will be held in Sydney (19-23 November 2018) and Melbourne (26-30 November 2018). Details about topics and case studies for these hearings will be published in advance.

The final report is due by 1 February 2019.

## **ASIC industry funding update**

As part of the ASIC industry funding arrangements, some organisations regulated by ASIC were required to submit information to ASIC before 27 September 2018 via the new online [ASIC Regulatory Portal](#). A letter was sent from ASIC with instructions to complete the process, including a unique industry funding security key. Most small proprietary companies are exempt, and registered charities are also not required to submit data.

## **Productivity Commission report into competition**

The Productivity Commission finalised its report into Competition in the Australian Financial System on 29 June 2018 and it was publicly [released](#) on 3 August 2018.

The Commission found that the Australian financial system has high market concentration. Some of this is attributable to regulatory arrangements. Price rivalry between the major banks is constrained. While there is a wide range of products on market, there is little to differentiate between them. Customer loyalty is being exploited.

To improve competition, the Commission argues for the need for a regulator to be a competition champion for the financial sector, and says that this role should be assigned to the ACCC.

The Commission says that there is a broken model of mortgage broker remuneration. It argues that trail commissions should be banned and clawback of commissions from brokers restricted. In addition, the Commission believes that brokers, advisers and lender employees who deliver home loans to customers should have a clear legally-backed best interest obligation to their clients.

Other key recommendations include:

- banks should appoint a Principal Integrity Officer to report directly to their board on the alignment of any payments made by the institution with the new customer best interests duty;
- for general insurance, a Treasury working group should examine the introduction of a deferred sales model to all sales of add-on insurance;
- the New Payments Platform requires a formal access regime; and
- more nuance is required in the design of APRA’s prudential measures, both in risk weightings and in directions to authorised deposit-taking institutions.

## **New Banking Code of Practice approved**

ASIC has [approved](#) the new Banking Code of Practice developed by the Australian Banking

Association. The new plain English [Code](#) commences on 1 July 2019. Features of the new Code include enhanced protection for small business borrowers and consumers. ASIC's approval of the new Code was conditional on an independent review of the definition of small business within 18 months of the Code's commencement.

## Licensing relief for foreign financial services providers extended

Licensing relief for foreign financial services providers has been [extended](#) to 30 September 2019 by ASIC to allow them to provide financial services to Australian wholesale clients without needing to hold an AFSL.

### FINTECH

#### Open Banking

Draft legislation for the new Consumer Data Right (CDR) regime was [released](#) for comment by Treasury. Submissions closed on 7 September 2018. The CDR will be the basis for Open Banking. In addition, the ACCC has [released](#) a framework and proposed rules for the Consumer Data Right. Please see our article [here](#) for details.

On 24 September 2018, Treasury [released](#) a second stage of exposure draft legislation, and a draft instrument that will apply the CDR to the banking sector. The consultation period closed on 12 October 2018. The revised draft legislation includes amendments to definitions and the proposed privacy safeguards, and more limits on rule-making powers.

### INSURANCE

#### ASIC reviews direct life insurance

ASIC [released](#) its report into direct life insurance sales on 30 August 2018. It found high cancellation rates and poor claims results. ASIC thinks that these factors indicate that products are being mis-sold. ASIC also announced that it intends to restrict outbound sales of life and funeral insurance in order to protect consumers. ASIC claims that sales of accidental death insurance were particularly problematic - ASIC believes that it offers little value to consumers and said that unless firms can demonstrate that accidental death insurance can meet consumer needs, ASIC expects firms to stop selling this product.

#### ASIC reviews insurance in superannuation

On 7 September 2018 ASIC [released](#) a report (REP 591 *Insurance in Superannuation*) on the provision of insurance cover through superannuation. ASIC found poor complaints-handling timeframes and practices and that some trustees automatically defaulted members as 'smokers' when transferring them to different sections of the same fund. The report sets out recommended actions for trustees to take.

### MANAGED INVESTMENTS

#### Corporate collective investment vehicles – tranches 2 and 3

Treasury has released for public consultation the [second](#) and [third](#) tranches of the *Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2018* (Cth) and explanatory materials. The Corporate Collective Investment Vehicle will offer an internationally recognisable investment vehicle which can be readily marketed to foreign investors, including through the Asia Region Funds Passport.

## ASIC updates guidance for funds management industry

ASIC has [released](#) seven new and updated regulatory guides for the funds management industry. The guidance has been updated for changes arising from the Asia Region Funds Passport.

## Guidance for trustees of wholesale equity schemes

ASIC has [updated](#) its regulatory guide RG 192 on wholesale equity schemes.

## MUTUALS

### Mutual entities draft legislation released

Treasury has [released](#) for public consultation an exposure draft of the *Treasury Laws Amendment (Mutual Entities) Bill 2018* (Cth). Submissions are due by 1 November 2018.

The Bill introduces a definition of a mutual entity in the *Corporations Act 2001* (Cth) (the **Corporations Act**) and removes the uncertainty for transferring financial institutions and friendly societies in respect of the demutualisation provisions in Schedule 4 of the Corporations Act.

The definition of a mutual entity will be that a mutual entity is a company registered under the Corporations Act that has a constitution which provides that each member of the company has no more than one vote at a general meeting of the company.

The Bill will also repeal the current trigger for the disclosure of a demutualisation in Schedule 4 of the Corporations Act. Instead, the disclosure requirements for a demutualisation will be triggered when a transferring financial institution that meets the new mutual entity definition makes an amendment to its constitution that means it will no longer meet the mutual entity definition.

The proposed amendments implement some of the recommendations of the Hammond inquiry into Reforms for Cooperatives, Mutuals and Member-owned Firms.

## PAYMENTS

### Review of stored-value facilities

The Council of Financial Regulators (CFR) [released](#) for public consultation an issues paper on the regulation of stored-value facilities on 24 September 2018. The paper is part of a CFR review of the regulatory framework for stored-value facilities, such as purchased payment facilities. Submissions are due by 19 October 2018.

### Treasury consults on gift card expiry dates

A draft bill, the *Competition and Consumer Amendment (Gift Cards) Bill 2018* (Cth), was [released](#) by Treasury to mandate minimum three year expiry dates for gift cards, require gift cards to display expiry dates, and ban post-purchase fees on gift cards.

## ACCC inquiry into foreign currency conversion services

The ACCC will hold an [inquiry](#) into the supply of foreign currency conversion services in Australia. An issues paper has been released and submissions are due by 22 October 2018. The ACCC will examine the pricing of foreign currency conversion services in Australia and evaluate whether there are impediments to effective price competition in the sector. A report is due by 31 May 2019.

### PRUDENTIAL

## Updated guidance on cloud computing services

APRA has [updated](#) its guidance on cloud computing by releasing a new information paper which updates the guidance previously released in July 2015.

## FAQs on large exposures framework

APRA has [published](#) FAQs relating to standards and guidance for large exposures for authorised deposit-taking institutions. The large exposures framework commences on 1 January 2019, subject to transitional provisions.

## National Claims and Policies Database (NCPD)

The NCPD is a database of policy and claim information on professional indemnity and public and product liability insurance, with data on every open, reopened or finalised claim and policy underwritten since 2003. It was [published](#) by APRA on 26 September 2018.

### SUPERANNUATION

## Concessional contributions catch up

From [1 July 2018](#), persons with superannuation balances below \$500,000 can use the unused portions of their concessional contributions cap. The unused portions can be carried forward for five years to enable extra contributions from 2019-20 onwards.

## Three year audit cycle for SMSFs

Treasury [released](#) a consultation paper seeking feedback on a measure announced in the 2018-19 Budget to change the annual audit requirement to a three yearly requirement from 1 July 2019 for SMSFs with a history of good record-keeping and compliance.

### DISPUTES AND ENFORCEMENT

## Proposals to strengthen penalties for corporate and financial sector misconduct

Draft legislation has been [released](#) to strengthen penalties for corporate and financial sector misconduct. The *Treasury Laws Amendment (ASIC Enforcement) Bill 2018* (Cth) would amend the Corporations Act, the *National Consumer Credit Protection Act 2009* (Cth), and the *Insurance Contracts Act 1984* (Cth). As described by The Treasury, the proposed amendments:

- update the penalties for certain criminal offences in ASIC-administered legislation, including increasing the maximum imprisonment penalties for some offences, introducing a formula to calculate financial penalties, removing imprisonment as a penalty, and increasing the financial penalties for all strict and absolute liability offences;

- introduce ordinary criminal offences that sit alongside strict and absolute liability offences;
- significantly increase the financial penalties for civil contraventions and give courts discretion to strip contraveners of their ill-gotten gains in civil penalty proceedings;
- modernise and expand the civil penalty regime by making a wider range of offences subject to civil penalties;
- harmonise and expand the infringement notice regime;
- introduce a new test that applies to all dishonesty offences under the Corporations Act; and
- ensure the courts prioritise compensating victims over ordering the payment of financial penalties.

The proposed changes reflect some of the recommendations of the ASIC Enforcement Review Taskforce.

## **AFCA membership**

Existing financial services firms were required to [join](#) the Australian Financial Complaints Authority (**AFCA**) by 21 September 2018. AFCA commences to operate on 1 November 2018.

## **AFCA rules**

AFCA has conducted consultations on its [rules](#) and [funding](#) structure. The consultations have now closed. On 12 September 2018, ASIC [announced](#) that it had approved the rules.

## **ASIC's corporate plan 2018-2022**

ASIC has [released](#) its corporate plan for 2018-22. The plan identifies areas of focus for ASIC over this period as well as strategic priorities and specific regulatory actions that it intends to take. The regulatory actions will “drive positive behaviours” to improve consumer and investor outcomes and include a revised guidance on responsible lending due by July 2019, a review of the “buy-now-pay-later” industry, and a deferred sales model for add-on insurance in car dealerships. Projects to address misconduct will cover financial advice and insurance in superannuation, timeshare advice and sales, and breach reporting practices in large banks, among other things. In the credit area, there are continuing projects on loan fraud and on responsible lending in the car finance industry.

## **ASIC gets more funding for ‘proactive’ enforcement**

The Federal Government has [announced](#) that it will provide a further \$70.1 million to ASIC for a package of measures including:

- \$26.2 million to accelerate and increase the intensity of ASIC's enforcement activities and enhance its capacity to pursue actions for serious misconduct against well-funded litigants, through the Enforcement Special Account;
- \$9.4 million to boost supervision of the superannuation sector by strengthening audit and enforcement action to improve transparency and outcomes for superannuation members;
- \$8 million to embedding dedicated staff within the big four banks and AMP to monitor governance and compliance actions;
- \$6.8 million to establish a dedicated taskforce which will conduct a proactive, targeted and thematic review into corporate governance;
- \$6.6 million to implement the reforms to the whistleblower protection laws; and
- \$6 million to promote Australia as a leader in regtech.

The remaining funds will be directed towards improving consumer access to the Financial

Advisers Register; enhancing ASIC's enforcement work on the unfair contract term protections for small businesses; and ensuring compliance by licensees and financial advisers with the Future of Financial Advice laws.

## ASIC enforcement report

ASIC [released](#) on 9 August 2018 its enforcement outcomes report for January to June 2018. Highlights include 67 investigations commenced, 68 people banned from financial services or credit, \$20.4 million in civil penalties, 16 infringement notices issued, and 12 enforceable undertakings.

## ASIC reports on delayed breach reporting and remediation

ASIC released a report on 25 September 2018 claiming that there were “serious, unacceptable delays in the time taken to identify, report and correct significant breaches of the law among Australia's most important financial institutions.” REP 594 *Review of selected financial services groups' compliance with the breach reporting obligation* was based on a review of 12 financial services groups, including the big four banks and AMP.

ASIC claims that financial institutions are taking too long to identify significant breaches, and that the major banks take an average time of 1,726 days to identify them. ASIC thinks that the process from starting an investigation to lodging a breach report with ASIC also takes too long. It says that major banks take an average of 150 days to do this. ASIC also found that one in every seven significant breaches in the survey were reported later than the 10 business day required reporting period.

There were also delays in remediation for consumer loss, according to the report, with an average of 226 days from the end of an investigation into a breach and first payment to impacted consumers.

## Update on fees for no service refund programs

ASIC [published](#) an update on 7 August 2018 on the fees for no service (FFNS) refund programs by the four major banks and AMP. They have now paid or offered customers \$222.3 million in refunds and interest. ASIC reported that it was also overseeing FFNS remediation programs by other Australian financial services licensees. The total amount now paid or offered to customers across all licensees is \$259.6 million. ASIC says it is also aware that five financial services licensees or institutions have provisioned for future remediation payments which if all paid in full would mean FFNS remediation may exceed \$850 million.

## CBA enforceable undertaking on BBSW

Commonwealth Bank of Australia (CBA) has [given](#) an enforceable undertaking to ASIC in relation to its bank bill trading business and its participation in the setting of the Bank Bill Swap Rate (BBSW). CBA has agreed to pay \$15 million to be applied to the benefit of the community and \$5 million towards ASIC's investigation and legal costs. CBA will also engage an independent expert to review changes it is making in relation to BBSW trading conduct.

## Westpac settles responsible lending case

Westpac has [settled](#) the action brought against it by ASIC for alleged breaches of responsible lending obligations in relation to certain home loans. It is proposed that Westpac will pay a \$35 million civil penalty and pay ASIC its legal costs and investigation costs. The parties submitted a statement of agreed facts with the Court and a joint submission on the appropriate penalty. Westpac has acknowledged in the statement that its automated decision system breached responsible lending obligations because it used a benchmark rather than actual household

expenses, and for loans for owner occupied borrowers with an interest-only period, it did not use higher repayments at the end of the interest-only period when assessing capacity.

### **Prospra's unfair contract terms**

Small business lender Prospra has removed or changed terms in its standard loan contract following an ASIC review which found that they were unfair. Details of the clauses affected can be found [here](#).

### **ASIC proceedings against NAB companies on fees for no service**

Legal proceedings have been [commenced](#) by ASIC against two National Australia Bank superannuation trustee entities alleging that funds were deducted when services were not provided. The fees total nearly \$100 million. ASIC alleges that fund members were misled and that the entities breached their obligation to provide financial services efficiently, honestly and fairly.

### **ASIC proceedings against ANZ in relation to 2015 institutional equity placement**

On 14 September 2018 ASIC [commenced](#) civil penalty proceedings against Australia and New Zealand Banking Group Limited (**ANZ**) for an alleged continuous disclosure breach in relation to a \$2.5 billion institutional share placement in 2015. ASIC alleges that that ANZ contravened the Corporations Act by failing to notify the stock exchange that about \$791 million of the \$2.5 billion of ANZ shares offered in the placement were to be acquired by its underwriters rather than placed with investors.

### **Timeshare lender fined**

A timeshare lender, Future Holiday Finance Pty Ltd (**FHF**), has paid \$135,000 in infringement notices and given an enforceable [undertaking](#) to ASIC over responsible lending failures in connection with loans for purchasing interests in a timeshare scheme. FHF has also agreed to review loans over a 5 year period and to provide refunds to consumers when the loans were unsuitable.

### **ASIC sues Dover**

A civil penalty action was [commenced](#) on 12 September 2018 by ASIC against Dover Financial Advisers and its sole director Terry McMaster. ASIC alleges that Dover misled and deceived clients using its 'Client Protection Policy'.

### **Misleading initial coin offerings and crypto-asset funds**

ASIC [reports](#) that it has taken action to stop several proposed initial coin offerings or token-generation events targeting retail investors and that it also recently stopped the issue of a product disclosure statement for a crypto-asset managed investment scheme. ASIC has identified consistent problems including the use of misleading or deceptive statements in sales and marketing materials, operating an illegal unregistered managed investment scheme, and not holding an Australian financial services licence.

### **Rent 2 Own Cars Australia**

ASIC has [commenced](#) proceedings against Rent 2 Own Cars Australia Pty Ltd (**R2O Cars**) and two directors. ASIC is alleging breaches of key requirements under the National Credit Code, namely that R2O Cars instructed its franchisees to use "calculators" that miscalculated the

weekly repayment amount, resulting in consumers being charged amounts in excess of the annual cost rate of 48%, and that R2O Cars also failed to disclose in its contracts the actual annual percentage rate, and charged consumers in excess of the rate disclosed.

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