



DWYER HARRIS



FINANCIAL SERVICES AND CREDIT

QUARTERLY UPDATE

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CONSUMER CREDIT

ASIC reviews consumer experience of getting home loans

On 29 August 2019, the Australian Securities and Investments Commission (**ASIC**) released its research report [REP 628](#) *Looking for a mortgage: Consumer experiences and expectations in getting a home loan*. For this report, ASIC followed over 300 consumers in the process of taking out a home loan and surveyed another 2,000 consumers. ASIC found that consumers who visit a mortgage broker expect the broker to find them the 'best' home loan, but mortgage brokers were inconsistent in the ways they presented home loan options to consumers, and sometimes offered little or no explanation of the options considered, or reasons for their recommendation. First home buyers were more likely to take out their loan with a mortgage broker, while consumers taking out a loan directly through a lender were more likely to be refinancing or have had previous experience taking out home loans.

Mortgage broker best interests duty and remuneration reforms

On 26 August 2019, the Treasury [released](#) exposure drafts for the *National Consumer Credit Protection Amendment (Mortgage Brokers) Bill 2019 (Cth)* and *National Consumer Credit Protection Amendment (Mortgage Brokers) Regulations 2019 (Cth)* for public consultation.

The draft Bill requires mortgage brokers to act in the best interests of consumers when providing credit assistance. The Bill and Regulations make changes to mortgage broker remuneration by:

- requiring the value of upfront commissions to be linked to the amount drawn down by borrowers, instead of the loan amount;
- banning campaign and volume-based commissions and payments; and
- capping soft dollar benefits.

The Regulations limit the period over which commissions can be clawed back from aggregators and mortgage brokers to two years, and prohibit the cost of clawbacks being passed on to consumers. The reforms are scheduled for effect on 1 July 2020. Feedback on the drafts was due by 4 October 2019.

Treasurer comments on responsible lending

The Treasurer, the Hon Josh Frydenberg MP, weighed into the debate on responsible lending at a speech to the AFR Property Summit on 26 September 2019. He said that "the risk that the provision of credit may cause substantial hardship to some should not result in a significant reduced ability to access credit by the vast majority of consumers ... The values of personal responsibility and personal accountability must remain central to our society and if the pendulum swings too far in the abrogation of these values, then it will inevitably reduce the availability of credit and increase its price ... Should responsible lending laws be applied too stringently, they will also negatively impact consumer behaviour with consumers more likely to remain with their current provider than go through the red tape burden associated with looking for alternatives."

CONSUMER PROTECTION AND COMPETITION

ACCC authorisation of Banking Code conditional on changes

On 11 July 2019 the Australian Competition and Consumer Commission (**ACCC**) granted [interim authorisation](#) to the Australian Banking Association Inc (**ABA**) to amend the 2019 Banking Code to implement changes in accordance with the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the **Banking Royal Commission**) relating to basic bank accounts, informal overdrafts, dishonour fees, and default interest charged on loans secured by agricultural land. The ABA

proposes to bring all of these amendments into effect on 1 March 2020 and had requested authorisation from the ACCC for a period of 10 years.

On 27 September 2019, the ACCC [issued](#) a draft determination proposing to grant [authorisation](#) to the arrangements for 5 years, but subject to a number of conditions to strengthen protections for low-income consumers and drought-affected farmers.

ACCC reviews customer loyalty schemes

The ACCC [released](#) its [draft report](#) on customer loyalty schemes on 5 September 2019. The review covered credit card loyalty schemes, among others. Concerns raised by the ACCC include:

- whether consumers receive the benefits advertised by loyalty schemes;
- unilateral changes by loyalty schemes to their terms and conditions;
- poor communication about how their schemes work;
- poor disclosure about how consumer data is used and shared; and
- the sharing of consumer data with unknown third parties.

Feedback on the draft report was due by 3 October 2019.

Potential ACCC competition inquiry into banking sector

According to an [article](#) in *The Sydney Morning Herald* on 4 October 2019, the ACCC's Financial Services Board is preparing to launch a new inquiry into the banking sector that will focus specifically on barriers to entry in retail banking.

FINANCIAL ADVICE

Ending grandfathered conflicted remuneration

On 1 August 2019, the Government [introduced](#) the *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019* (Cth) into Federal Parliament. The Bill removes the grandfathering arrangements for conflicted remuneration and other banned remuneration from 1 January 2021 and enables regulations to be made for the transition process.

On 21 August 2019, ASIC [announced](#) that it was investigating the progress of the transition away from grandfathered conflicted remuneration arrangements for financial advisers. ASIC will also investigate any impediments to this transition, and the extent to which benefits are being passed on to affected clients. ASIC says that it will provide updates and report back to the Treasurer and the public by 30 June 2021.

Review of financial counselling services

On 3 October 2019, the Government [released](#) the final report on the *Review of the Coordination and Funding for Financial Counselling Services across Australia*. The review was conducted in response to recommendations from the Banking Royal Commission.

The review noted the benefits of financial counselling to the community, including early intervention and prevention of further financial hardship, advocacy support, and referral to other services for complex issues. The review noted the challenges faced by the financial counselling sector, including increasing demand, fragmented delivery, and the complex situations and financial products that can lead to financial hardship. The Government has [announced](#) more than \$330 million in funding between 2019 and 2023 to help Australians navigate financial crises and build financial wellbeing.

FINANCIAL PRODUCTS

Removal of the exemption for funeral expenses policies

On 1 October 2019, the Government [released](#) exposure draft legislation and regulations in the form of the *Financial Services (Improved Consumer Protection) (No. 1) Bill 2019* (Cth) and the *Financial Services (Improved Consumer Protection) (No. 1) Regulations 2019* (Cth) to remove the exemption for funeral expenses policies from the definition of financial products in the *Corporations Act 2001* (Cth) (**Corporations Act**) and to ensure that it is clear that the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) apply to funeral expenses policies. Providers of funeral expenses policies will also be subject to anti-hawking obligations. Feedback on the drafts is due on 18 October 2019.

FINANCIAL SERVICES

School banking under review

ASIC is conducting a [review](#) of school banking programs in primary schools to understand how they are implemented and how they are marketed, how students are engaging with these programs and the accounts established through these programs, and to assess the benefits and risks of school banking programs. ASIC is looking to develop principles for appropriate conduct and good practice in the implementation of school banking programs. ASIC has published a consultation paper and has asked for submissions by 31 October 2019.

FINANCIAL SYSTEM

Regulations for design and distribution obligations

On 12 September 2019, draft regulations to support the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (Cth) were [released](#) for consultation. Comments are due by 11 October 2019.

The draft regulations propose to exclude the following products from the design and distribution obligations (**DDO**) regime:

- interests in eligible rollover funds;
- defined benefit interests;
- medical indemnity insurance products;
- depository interests in foreign fully paid ordinary shares (where the shares, if they were offered directly to retail clients, would not be subject to the DDO obligations);
- bank drafts (and money orders issued by or for Australia Post);
- credit facilities not issued in the course of a business of providing credit;
- credit provided for business purposes;
- certain credit facilities that do not involve the provision of credit;
- credit provided by pawnbrokers;
- the provision of a mortgage (as distinct from the credit contract secured by the mortgage); and
- financial products not received in this jurisdiction that are not already excluded from the DDO.

The draft Regulations propose to extend the DDO regime so that it applies to:

- simple corporate bonds and depository interests in simple corporate bonds, where the simple corporate bonds are, or are to be, issued under a 2 part simple corporate bonds prospectus;
- debentures of a body that is an authorised deposit-taking institution (**ADI**) or registered under section 21 of the *Life Insurance Act 1995* (Cth);

- basic banking products;
- custodial arrangements that are not already subject to the new regime, including an interest in an investor directed portfolio service; and
- products sold in certain situations where the DDO could be avoided.

The draft Regulations declare authorised distributors of basic bank deposit products and risk insurance products to be regulated persons for the purposes of the DDO regime. They also extend the definition of a regulated person to include credit licensees and credit representatives within the meaning of the *National Consumer Credit Protection Act 2009* (Cth) (the **NCCP Act**). These provisions mean that the distribution obligations in the DDO regime will extend to these persons.

Banking Royal Commission – implementation roadmap

On 19 August 2019, the Federal Government [released](#) its *Financial Services Royal Commission Implementation Roadmap*. The roadmap sets out how the Government will deliver its response to the Banking Royal Commission, and includes timelines for implementing the Government response.

Director and officer oversight of non-financial risk

ASIC's Corporate Governance Taskforce [released](#) the *Director and officer oversight of non-financial risk report* on 2 October 2019. ASIC's review found:

- management often operates outside of board-approved risk appetites for non-financial risks, particularly compliance risk;
- boards need to actively hold management accountable for operating within stated risk appetites;
- reporting of risk against appetite often did not effectively communicate the company's risk position;
- material information about non-financial risk is often buried in dense, voluminous board packs; and
- the effectiveness of board risk committees could be improved.

FINTECH

Select Committee on FinTech/RegTech

On 11 September 2019, the Senate [resolved](#) to establish the Select Committee on Financial Technology and Regulatory Technology. The Committee will inquire into and report on:

- the size and scope of the opportunity for Australian consumers and business arising from financial technology (**FinTech**) and regulatory technology (**RegTech**);
- barriers to the uptake of new technologies in the financial sector;
- the progress of FinTech facilitation reform and the benchmarking of comparable global regimes;
- current RegTech practices and the opportunities for the RegTech industry to strengthen compliance but also reduce costs;
- the effectiveness of current initiatives in promoting a positive environment for FinTech and RegTech start-ups; and
- any related matters.

The Committee will be accepting submissions and holding public hearings, and is to present its final report on or before the first sitting day in October 2020.

APRA grants full banking licence to neobank Xinja

On 9 September 2019, the Australian Prudential Regulation Authority (APRA) [announced](#) that it had granted Xinja Bank Limited a licence to operate as an ADI without restrictions under the *Banking Act 1959* (Cth). Xinja Bank Limited was previously licensed by APRA in December 2018 as a restricted ADI.

FinTech Sandbox

On 4 July 2019, the Government [introduced](#) the *Treasury Laws Amendment (2018 Measures No. 2) Bill 2019* (Cth) into Parliament to extend the FinTech sandbox application. The Bill had previously lapsed due to the dissolution of Parliament.

The Bill amends the *Corporations Act 2001* (Cth) and the NCCP Act to allow regulations to provide for exemptions from the Australian Financial Services Licence and Australian Credit Licence requirements for the purposes of testing financial and credit products and services under certain conditions. The 2019 Bill is substantively the same as the 2018 Bill, but now includes a mandatory post 12 month review mechanism.

INSURANCE

Add-on insurance sales reforms

On 9 September 2019, Treasury [released](#) a consultation paper for the introduction of an industry-wide deferred sales model for “add-on” insurance, such as travel insurance and consumer credit insurance. One of the Government’s responses to the Banking Royal Commission was to announce on 4 February 2019 that it would mandate such a model. A four day deferral period is proposed. Submissions closed on 30 September 2019.

On 1 October 2019, ASIC [released](#) a consultation paper *Product intervention: The sale of add-on financial products through caryard intermediaries (CP 324)* on proposals to use its product intervention power to reform the sale of add-on financial products (including insurance products) by car dealers.

Unfair contract terms extension to insurance contracts

On 30 July 2019, the Government [released](#) exposure draft legislation for the *Treasury Laws Amendment (Unfair Terms in Insurance Contracts) Bill 2019* (Cth), which would extend the unfair contract terms (UCT) regime to insurance contracts in response to the Banking Royal Commission. The amendments will commence 18 months after the Bill receives Royal Assent.

Since 2010, UCT laws have applied across the economy in most sectors that use standard form contracts in their dealings with consumers. Although the UCT laws apply to most financial products and services regulated by the ASIC Act, they do not currently apply to insurance contracts regulated under the *Insurance Contracts Act 1984* (Cth). Submissions closed on 28 August 2019.

PAYMENTS

ACCC review of foreign currency services

On 2 September 2019, the ACCC [released](#) the final [report](#) of the ACCC’s Foreign Currency Conversion Services Inquiry. The ACCC concluded that Australian consumers are paying too much for foreign currency conversion services because of confusing pricing and a lack of robust competition. The ACCC also released a [guide](#) to help consumers shop around.

Currency (Restrictions on the Use of Cash) Bill 2019

On 26 July 2019, the Federal Government [released](#) exposure draft legislation for the *Currency (Restrictions on the Use of Cash) Bill 2019* (Cth). The Bill introduces an economy wide cash payment limit of \$10,000 from 1 January 2020 and for certain AUSTRAC reporting entities from 1 January 2021 for payments made or accepted by businesses for goods and services. Transactions equal to or in excess of this amount would need to be made using the electronic payment system or by cheque. The Black Economy Taskforce recommended this action to tackle tax evasion and other criminal activities. Submissions closed on 12 August 2019.

PRIVACY AND DATA

MCCR and reporting hardship arrangements

On 15 August 2019, draft legislation was [released](#) for mandatory comprehensive credit reporting (**MCCR**) and the reporting of financial hardship arrangements to credit reporting bodies. The Government announced the proposed introduction of MCCR in November 2017. Legislation passed the House of Representatives in June 2018, but the Bill lapsed because of the election.

The new Bill, the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting and Other Measures) Bill 2019* (Cth) has been updated to include changes to the reporting of hardship arrangements, introducing a new category of information within credit reporting to enable hardship information to be reported alongside repayment history information. Under the current *Privacy Act 1988* (Cth), when a person has a hardship arrangement with one credit provider, this arrangement cannot be disclosed to other credit providers. While hardship information will appear on a consumer's credit report, credit reporting bodies will be prohibited from using hardship information to calculate a consumer's credit score.

Consumer Data Right Bill and Rules

On 1 August 2019, Parliament [passed](#) the *Treasury Laws Amendment (Consumer Data Right) Bill 2019* (Cth). The Bill had previously lapsed on 11 April 2019 due to the dissolution of Parliament.

On 2 September 2019, the ACCC [released](#) a "lock-down" version of the rules governing the Consumer Data Right (**CDR**). These rules cover the foundational rules required to implement the CDR in banking. There are 3 ways to request CDR data under the rules:

- product data requests;
- consumer data requests made by CDR consumers; and
- consumer data requests made on behalf of CDR consumers.

This version of the CDR Rules will be provided to the Treasurer for consent.

Additionally, the Privacy Commissioner is expected to release the first stage of the draft privacy safeguard guidelines for comment.

On 18 September 2019, the Government [introduced](#) the *Treasury Laws Amendment (2019 Measures No. 2) Bill 2019* (Cth), which includes amendments to the *Competition and Consumer Act 2010* (Cth) to require that the ACCC write rules allowing consumers to request that accredited data recipients delete CDR data relating to them.

PRUDENTIAL

Financial Sector (Shareholdings) Rules 2019

APRA [released](#) the *Financial Sector (Shareholdings) Rules 2019* (Cth) on 21 August 2019 to provide clarity to owners of new entrant financial sector companies on whether they are likely to be approved under the *Financial Sector (Shareholdings) Act 1998* (Cth) (FSSA) 'fit and proper' test.

The FSSA was amended by Parliament in 2018 to introduce a new streamlined 'fit and proper' test for shareholders of new or recently established ADIs and life insurers with assets below \$200 million, and general insurers with assets below \$50 million.

Updated prudential standard on related entities

On 20 August 2019, APRA [released](#) updated Prudential Standard [APS 222](#) *Associations with Related Entities* aimed at mitigating contagion risk from financial crises within banking groups. The update includes:

- a broader definition of related entities that includes board directors and substantial shareholders;
- revised limits on the extent to which ADIs can be exposed to related entities;
- minimum requirements for ADIs to assess contagion risk; and
- removing the eligibility of ADIs' overseas subsidiaries to be regulated under APRA's Extended Licensed Entity framework.

Additionally, APRA will require ADIs to regularly assess and report on their exposure to step-in risk – the likelihood that they may need to “step in” to support an entity to which they are not directly related. The new APS 222 will come into effect on 1 January 2021.

Consultation on supervisory levy

On 16 August 2019, Treasury [released](#) a consultation paper on the design and operation of the Financial Institutions Supervisory Levy, introduced in 1998. The focus of the consultation paper is on the methodology that is applied in calculating the levies. Submissions closed on 13 September 2019.

Consultation on non-centrally cleared derivatives

On 14 August 2019, APRA [released](#) for consultation amendments to its margin requirements for non-centrally cleared derivatives. On 19 September 2019, APRA released its response to submissions from the industry. The proposed changes to Prudential Standard [CPS 226](#) *Margining and risk mitigation for non-centrally cleared derivatives* will apply to all ADIs, general insurers, life insurers and registrable superannuation entity licensees.

Intra-group funding arrangements

On 24 July 2019, APRA announced the results of its review into funding agreements across the authorised deposit-taking industry. It [required](#) several banks to tighten the intra-group funding arrangements for their Australian operations.

APRA determined that the reporting of intra-group funding as stable by Macquarie Bank Limited, Rabobank Australia Limited and HSBC Bank Australia Limited was in breach of prudential liquidity standards. APRA is requiring these banks to strengthen intra-group agreements to ensure that term funding cannot be withdrawn in a financial stress scenario. APRA has also published a new frequently asked question on liquidity, available [here](#).

Draft APRA prudential standards on remuneration

On 23 July 2019, APRA [released](#) a draft prudential standard [CPS 511](#) *Remuneration* to clarify and strengthen remuneration requirements and accountability arrangements for regulated entities. As part of the reforms, APRA is proposing:

- to elevate the importance of managing non-financial risks, financial performance measures must not comprise more than 50% of performance criteria for variable remuneration outcomes;
- minimum deferral periods for variable remuneration of up to seven years will be introduced for senior executives in larger, more complex entities. Boards will also have scope to recover remuneration for up to four years after it has vested; and
- boards must approve and actively oversee remuneration policies for all employees, and regularly confirm they are being applied in practice to ensure individual and collective accountability.

The draft prudential standard complements the new Banking Executive Accountability Regime. Submissions close on 23 October 2019. APRA intends to release the final prudential standard before the end of 2019, with a view to it taking effect in 2021 following transitional arrangements.

APRA Capability Review

On 15 July 2019, the Treasury [released](#) the APRA Capability Review Report. The Report makes 24 recommendations. 19 recommendations are made to APRA and 5 recommendations reside with the Government. Both [APRA](#) and the [Government](#) have announced their support for the recommendations.

The main conclusion in the review is that APRA's internal culture and regulatory approach need to change in response to non-traditional, non-quantitative financial risks. The review details the need for the regulator to build and develop its capability in the areas of governance, culture and accountability, cyber risk, superannuation and crisis management.

SUPERANNUATION

APRA finalises revised prudential practice guide

On 28 August 2019, APRA [released](#) a finalised prudential practice guide [SPG 515](#) *Strategic and Business Planning*, which will come into force from 1 January 2020, and a draft [SPG 516](#) *Business Performance Review* for a six week consultation period. APRA expects to release the final version of SPG 516 in December.

SPS 515, which is to be read in conjunction with SPS 516, requires all registrable superannuation entity licensees to perform an annual business performance review to assess whether they are delivering sound, value-for-money outcomes for members and to consider what changes should be made to operations, as part of the business planning process. The guidelines complement the requirements of the legislated outcomes assessment introduced by *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* (Cth).

AML/CTF

AUSTRAC compliance audit of Afterpay and PayPal

On 13 June 2019, AUSTRAC [announced](#) the appointment of an external auditor to Afterpay Touch Group Ltd (**Afterpay**) to examine its compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). A preliminary audit report must be provided to

AUSTRAC within 60 days.

On 25 September 2019, Afterpay [announced](#) that it had provided an external auditor's interim report to AUSTRAC. Afterpay said the confidential interim report does not provide any recommendations, which will be left to the final report due on 23 November 2019.

On 24 September 2019, AUSTRAC [ordered](#) an audit of PayPal Holdings Inc with regards to similar laws, flagging concerns that reporting obligations had not been met.

DISPUTES AND ENFORCEMENT

ASIC flexes product intervention powers

On 12 September 2019, ASIC [announced](#) that it was using its product intervention power (PIP) for the first time to ban a short term lending model which involves payment of high management fees to a third party (*ASIC Corporations (Product Intervention Order – Short Term Credit) Instrument 2019/917*). ASIC consulted on the proposed order before making it. The order remains in force for 18 months unless it is extended or made permanent. ASIC [announced](#) on 27 September 2019 that Cigno Pty Ltd had made an application in the Federal Court to challenge the order. The order remains in force while the matter is before the Court.

On 22 August 2019, ASIC [released](#) a consultation paper *Product intervention: OTC binary options and CFDs (CP 322)* on proposals to use its PIP to address significant detriment to retail clients resulting from over-the-counter binary options and CFDs.

On 1 October 2019, ASIC [released](#) a consultation paper *Product intervention: The sale of add-on financial products through caryard intermediaries (CP 324)* on proposals to use its PIP to reform the sale of add-on financial products by car dealers. ASIC is seeking to introduce a deferred sales model to sales of add-on insurance products and warranties, other than comprehensive or compulsory third party (CTP) insurance, and manufacturers' warranties provided with new cars. This would apply to all sales where finance is arranged for motor vehicles, including by car dealers, finance brokers and salary packaging firms. The deferred sales model will be complemented by additional obligations, such as the use of 'knock out' questions to prohibit sales where the product has low or no value, and prohibiting the sale of warranties that provide low levels of cover. Submissions close on 12 November 2019.

APRA updates Enforcement Approach

On 3 September 2019, APRA [announced](#) an update to its [Enforcement Approach](#) to outline how it will increase transparency around the use of its formal enforcement powers. The update also sets out APRA's intention to take stronger action against institutions that fail to meet their legal obligations to report data to APRA in full and on time. The Enforcement Approach was first published in April 2019 following a review.

ASIC Enforcement Review Taskforce recommendations implementation

On 11 September 2019, the Government [released](#) draft legislation which implements the recommendations of the ASIC Enforcement Review Taskforce relating to Search Warrants, Access to Telecommunications Intercept Material, Licensing and Banning Orders. The draft legislation:

- strengthens ASIC's licensing powers by replacing the AFS Licence requirement that a person be of 'good fame and character' with an on-going requirement that they be a 'fit and proper person';
- aligns the penalties for false and misleading statements in AFS and Australian Credit Licence applications;
- extends ASIC's powers so that they may ban a person from performing functions in a

financial services or credit business. The legislation also expands the grounds on which ASIC can issue banning orders;

- harmonises ASIC's powers across different Acts and brings them into line with the search warrant powers in the *Crimes Act 1914* (Cth); and
- allows interception agencies to provide lawfully intercepted information to ASIC for serious offences that ASIC can investigate or prosecute.

Feedback is due by 9 October 2019.

APRA loses court case against IOOF

On 20 September 2019, the Federal Court of Australia [dismissed](#) with costs APRA's application for a finding that IOOF entities, directors and executives had contravened their obligations under the *Superannuation Industry (Supervision) Act 1993* (Cth). APRA is considering whether to appeal the decision.

[APRA](#) initiated the action last December due to its view that IOOF entities, directors and executives had failed to act in the best interests of their superannuation members. Before taking the court action, APRA had sought to resolve concerns with IOOF over several years but considered that it was necessary to take stronger action after concluding the company was not making adequate progress, or likely to do so in an acceptable period of time. Additional licence conditions that APRA imposed on IOOF in December 2018 are unaffected by the judgment and remain in force.

ASIC takes action against Select AFSL

On 9 September 2019, ASIC [announced](#) that it had commenced civil penalty proceedings in the Federal Court against Select AFSL Pty Ltd (**Select**) and other defendants in relation to telephone sales of life and accidental injury insurance during the period 1 February 2015 to 19 March 2018. ASIC is alleging breaches of the ASIC Act in relation to 14 consumers, including unconscionable conduct when selling insurance and/or taking payment details over the phone and when consumers attempted to cancel their insurance policies; undue harassment; coercion; and/or making false and/or misleading representations.

ASIC sues Bank of Queensland and Bendigo and Adelaide Bank

On 4 September 2019, ASIC commenced proceedings in the Federal Court against [Bank of Queensland](#) and separately against [Bendigo and Adelaide Bank](#) concerning allegedly unfair contract terms in their small business contracts. ASIC is also seeking a declaration from the Federal Court that the same terms in any other small business contract are also unfair.

Allianz to refund CCI premiums and fees

On 27 August 2019, ASIC [announced](#) that Allianz Australia Insurance Limited (**Allianz**) will refund over \$8 million in consumer credit insurance (**CCI**) premiums and fees including interest to more than 15,000 consumers. The refunds relate to the sale of cover to consumers who were ineligible to make a claim for unemployment or disability, the sale of death cover to customers under 21 years of age who were unlikely to need that cover, and the charging of fees to customers who paid premiums by the month without adequate disclosure.

AFCA will now name financial firms

On 26 August 2019, ASIC [approved](#) changes to the Australian Financial Complaints Authority (**AFCA**) Rules to allow the scheme to name financial firms in published determinations. Consumers who are party to a complaint will continue to be anonymised in all determinations.

ASIC sues NAB over home loan referrer scheme

On 23 August 2019, ASIC [announced](#) that it had commenced proceedings in the Federal Court against National Australia Bank Limited (**NAB**) for breaches of the law arising from alleged failures with its Introducer Program. These failures were identified during the Banking Royal Commission.

The proceedings relate to the conduct of 16 bankers accepting loan information and documentation from 25 unlicensed introducers in relation to 297 loans. ASIC alleges that between 3 September 2013 and 29 July 2016, NAB accepted information and documents in support of consumer loan applications from third party introducers who were not licensed to engage in credit activity. ASIC also alleges that NAB breached its obligations under s 47 of the NCCP Act, which requires credit licensees to engage in credit activities efficiently, honestly and fairly and to comply with the Act.

Europcar \$350,000 penalty for excessive card payment surcharges

On 14 August 2019 the Federal Court [ordered](#) CLA Trading Pty Ltd (trading as **Europcar**) to pay \$350,000 in penalties for charging excessive credit and debit card payment surcharges in breach of the *Competition and Consumer Act 2010* (Cth). Europcar admitted that, between July and August 2017, it charged Visa and Mastercard credit users fees that were higher than Europcar's costs to accept payments from those credit cards. It also admitted that, between July and 5 November 2017, the company had charged excessive surcharges on Visa and Mastercard debit cards.

According to the [ACCC](#), Europcar imposed excessive surcharges on transactions affecting 63,012 customers, and over-charged more than \$67,000. The amount of each excessive surcharge charged by Europcar was relatively small, at an average of just over \$1 per customer.

The ACCC instituted proceedings against Europcar in July 2018 for breaches of the excessive surcharging laws. Europcar subsequently admitted liability, and the ACCC and Europcar made joint submissions to the Federal Court that Europcar should be ordered to pay a penalty of \$350,000 and a proportion of the ACCC's legal costs.

APRA imposes additional \$250m capital requirement on Allianz

On 14 August 2019, APRA [announced](#) that it will apply an additional \$250 million capital requirement to Allianz Australia Limited to reflect the issues identified in the insurer's risk governance self-assessment. The extra capital requirement will remain until the company completes remediation work underway to strengthen risk management, and closes gaps identified in its self-assessment.

ASIC loses responsible lending case against Westpac; will appeal decision

On 1 March 2017, ASIC commenced Federal Court proceedings against Westpac to test the responsible lending provisions of the NCCP Act. On 13 August 2019 Justice Perram handed down his [decision](#) to dismiss ASIC's proceedings with costs.

The NCCP Act requires lenders to assess whether loans will be unsuitable for consumers. ASIC [alleged](#) that Westpac's automated assessment system used a benchmark (the Household Expenditure Measure or HEM) for consumer expenses and did not have regard to the actual expenses provided by the consumer and was therefore in breach of its obligations. Further, in assessing home loans with an interest-only period, ASIC alleged that Westpac was required to have regard to the higher repayments at the end of the interest-only period and did not do so.

In his judgment, Perram J found that a lender “may do what it wants in the assessment process” and that other provisions of the Act impose penalties if lenders make unsuitable loans as a result of that process. Perram J also found that Westpac did in any case take account of consumers’ declared living expenses. For more information see our article [here](#). ASIC [announced](#) on 10 September 2019 that it would appeal the decision of Perram J.

ASIC consultation for guidance on whistleblower policies

On 7 August 2019, ASIC [released CP 321 Whistleblower policies](#) for public consultation. The proposed regulatory guide on whistleblower policies explains how companies can establish, implement and maintain a policy. It covers the information that companies must include in their whistleblowers policy, including how they will support and protect whistleblowers and handle and investigate whistleblower disclosures. Feedback on the consultation closed on 18 September 2019.

Public companies, large proprietary companies and corporate trustees of registrable superannuation entities must implement a whistleblower policy and make it available to their officers and employees by 1 January 2020.

Debt collection company in court over alleged harassment

On 24 July 2019, the ACCC [announced](#) proceedings in the Federal Court against debt collection agency Panthera Finance Pty Ltd alleging that it unduly harassed 3 consumers over debts they did not owe. The ACCC is seeking pecuniary penalties, declarations, injunctions, orders for a compliance program, publication orders and costs.

CommInsure prosecuted for hawking

On 4 October 2019, ASIC [announced](#) that The Colonial Mutual Life Insurance Society Ltd (trading as CommInsure) had been charged with 87 counts of offering to sell insurance products in the course of non-compliant unsolicited telephone calls. ASIC alleges that CommInsure, through a telemarketing agent, unlawfully sold life insurance policies known as Simple Life over the phone.

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