



DWYER HARRIS



FINANCIAL SERVICES AND CREDIT

QUARTERLY UPDATE

April 2021

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GENERAL

Breach reporting reforms

From 1 October 2021, the breach reporting obligations of financial services licensees will change, and credit licensees will become subject to the same breach reporting requirements. Further details can be found in our recent article [here](#).

On 10 March 2021, Treasury [released](#) exposure draft regulations relating to these changes. The regulations would amend the *Corporations Act 2001* (Cth) (the **Corporations Act**) and the *National Consumer Credit Protection Act 2009* (Cth) (the **NCCP Act**) to prescribe civil penalty provisions that are not taken to be significant (and therefore may not be reportable breaches). The provisions to be prescribed as not being significant include failure to give a product disclosure statement, financial services guide or credit guide. The draft regulations would also provide that some of the breach reporting offences and civil penalty provisions may be subject to an infringement notice, and make minor and technical amendments.

CONSUMER CREDIT

Responsible lending reforms delayed

The Bill to remove the responsible lending obligations [passed](#) the House of Representatives on 15 March 2021 but did not pass the Senate before the Senate adjourned until May.

The Bill was [considered](#) by the Senate Economics Legislation Committee. A majority supported the Bill, but the Labor and Greens Senators on the Committee published dissenting reports.

The Treasurer [announced](#) on 19 March 2021 that the small business exemption that was issued in 2020 will be extended until the Government secures passage of the Bill through the Senate.

Licensing of debt management firms

On 25 September 2020, the Federal Government announced that it would introduce licensing obligations for debt management firms representing consumers in credit disputes. Treasury has [released](#) draft regulations to implement this reform. The draft regulations prescribe a new type of “credit activity” for the purposes of section 6 of the NCCP Act which will require providers of debt management services to hold an Australian credit licence and meet the ongoing conduct obligations imposed on credit licensees.

There will be an exemption for lawyers. The exemption cannot be relied on where a third party holds out or advertises to consumers that the lawyer is able to provide a debt management service, and there is an arrangement between the third party and the lawyer by which the third party regularly refers persons for the purpose of being provided a debt management service.

BNPL code commences

The Buy Now Pay Later Code of Conduct issued by the Australian Finance Industry Association [commenced](#) on 1 March 2021. The code is a voluntary code which has been subscribed to by some of the major participants in the buy now pay later sector.

Credit betting regulation review

A [review](#) is being conducted of the credit betting provisions in the *Interactive Gambling Act 2001* (Cth) (the **IGA**) by the regulator, the Australian Media and Communications Authority (the **ACMA**). The credit betting prohibitions are set out in the IGA and apply to providers of regulated interactive gambling services that are wagering services. This includes online wagering and telephone betting services. The IGA prohibits (with some exceptions) a wagering operator from providing, or offering to provide, credit or facilitating or promoting the provision of credit (other

than by way of an independently-issued credit card) by a third person in connection with their wagering service, to customers or prospective customers who are physically present in Australia. An issues paper was published by the ACMA and submissions closed on 31 March 2021.

CONSUMER PROTECTION

Updated banking industry guidance on financial abuse

On 4 April 2021, the Australian Banking Association [announced](#) that it had updated its banking industry guidelines on financial abuse. The guidelines were last updated in 2016. The guidelines include policies and practices that banks will have in place to support customers impacted by family violence and/or financial abuse, including specialised training for staff, making it easier for customers to communicate with the bank in a safe and confidential way, guidance on reporting to relevant authorities, referring customers for extra support, and helping customers regain control over their finances.

CORPORATE

ASIC no-action position for AGMs

The temporary COVID-19 measures in relation to the holding of electronic meetings and the use of electronic signatures expired on 21 March 2021. The Bill to extend these measures to September 2021, the *Treasury Laws Amendment (2021 Measures No. 1) Bill 2021* (Cth), has been delayed by the Senate.

The Australian Securities and Investments Commission (**ASIC**) [announced](#) on 23 March 2021 that it was adopting a temporary no-action position in relation to electronic meetings and meeting notices and to give public companies an additional two months to hold their annual general meetings. However, ASIC will not be providing a no-action position in relation to electronic signatures. Companies may therefore need to revert to the use of physical signatures for signing of documents by directors under section 127 of the Corporations Act.

ASIC [published](#) further details of its no-action position on 29 March 2021. ASIC's no-action position supports the holding of meetings using appropriate technology, facilitates electronic notice of meetings including supplementary notices, and allows more public companies an additional two months to hold their AGMs.

The position relating to the holding and convening of meetings using virtual technology applies to meetings held between 21 March 2021 and the earlier of 31 October 2021 and the date when any measures are passed by the Parliament relating to the use of virtual technology in meetings of companies or managed investment schemes.

The position relating to the two-month deferral of AGMs applies to entities with financial years ending up to 7 April 2021.

ASIC's reason for declining to provide a no-action position in relation to the electronic execution of company documents is that it considers that these matters are primarily concerned with the capacity of companies to enter arrangements with third parties rather than Corporations Act obligations administered and enforced by ASIC.

FINANCIAL ADVICE

Reforms passed for ongoing fee arrangements

The *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021* (Cth) received [assent](#) on 2 March 2021. The Act amends the Corporations Act to require financial services providers that receive fees under an ongoing fee arrangement to provide clients with a

document each year which outlines the fees they will be charged and the services they will be entitled to in the following 12 months, and which seeks annual renewal for all ongoing fee arrangements. It requires the provider to obtain written consent before fees under an ongoing fee arrangement can be deducted from a client's account. It also requires a financial services licensee or authorised representative to give a written disclosure of lack of independence where applicable if they are authorised to provide personal advice to a retail client.

The Act also amends the *Superannuation Industry (Supervision) Act 1993* (Cth) by introducing a requirement that a superannuation trustee can only charge advice fees to a member where certain conditions are satisfied and by removing a superannuation trustee's ability to charge fees under an ongoing fee arrangement for financial product advice from MySuper products.

The reforms commence on 1 July 2021.

Legislative instruments have since been [made](#) by ASIC that deal with advice fee consents and independence disclosure following the enactment of the Act.

FINANCIAL MARKETS

ASIC PIO on binary options

A product intervention order (**PIO**) has been [made](#) by ASIC to ban the issue and distribution of binary options to retail clients. ASIC found that binary options have resulted in significant detriment to retail clients. The ban takes effect on 3 May 2021.

ASIC PIO on CFDs

On 29 March 2021, the PIO [issued](#) by ASIC in relation to the issue and distribution of contracts for difference (**CFDs**) to retail clients took effect. The ASIC order reduces CFD leverage available to retail clients and targets CFD product features and sales practices which may increase CFD losses to retail clients.

FINANCIAL SERVICES

Five year sunset date for litigation funding relief

On 23 February 2021, ASIC [announced](#) that it had revised the length of relief relating to litigation funding schemes. Relief originally granted in August 2020 provided exemptions from certain provisions of the Corporations Act for litigation funding schemes. The primary instrument has been amended to include a five year sunset date instead of the original sunset date of 1 October 2030.

FINANCIAL SYSTEM

Giving licensees information about their representatives

On 22 March 2021, ASIC [released](#) Information Sheet 250 *Giving AFS and credit licensees information about their representatives*. The information sheet outlines ASIC's approach to giving licensees information about a representative.

INSOLVENCY

Bankruptcy system and impact of COVID-19: discussion paper

The Attorney-General's Department has [released](#) a discussion paper on possible changes to the personal insolvency system as part of the Government's response to address the impacts of COVID-19. Reforms have already been made to the *Bankruptcy Act 1966* (Cth) as part of the

Government's response to COVID-19, including increasing the bankruptcy threshold to \$10,000. However the period of temporary debt protection and the amount of time to respond to a bankruptcy notice has reverted back from six months to 21 days.

Treasury consults on raising minimum threshold for company statutory demand

On 15 February 2021, Treasury [released](#) a consultation paper on whether to permanently raise the minimum threshold (currently \$2,000) at which creditors can issue a statutory demand on a company. Submissions closed on 5 March 2021.

INSURANCE

Exemption for deferred sales model for add-on insurance products

Treasury [released](#) a consultation paper on 13 January 2021 seeking submissions on exemptions that would be made to the deferred sales model for add-on insurance products implemented by the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (Cth). The consultation period ended on 15 February 2021.

The Government has announced that it intends to exempt add-on travel insurance products and also CTP insurance for motor vehicles from the deferred sales model. Exemptions can be made subject to conditions and Treasury has invited stakeholder views on appropriate conditions. The deferred sales model commences on 5 October 2021.

ASIC consults on deferred sales model

On 11 March 2021 ASIC [released](#) a consultation paper and draft regulatory guide in relation to the deferred sales model for add-on insurance products. Comments are due by 23 April 2021. The draft regulatory guide includes guidance on how ASIC will exercise its power to exempt products or classes of products from the new regime.

Claims handling a financial service

Regulations have been [made](#) to include insurance claims handling as a financial service. The regulations provide however that provide that people who investigate or assess insurance claims are not required to be licensed.

The regulations also prohibit certain types of advice being given by someone handling claims without being licensed as a financial adviser. The types of advice are: how an insurance benefit should be structured (e.g. lump sum versus regular payments); how an insurance benefit should be managed or used (e.g. invested in certain products or schemes); and advice which relates to other insurance products not held by the person making the claim, or financial products (e.g. advice about certain products which an insurance benefit could be invested in).

People who represent an insured to pursue an insurance claim under a general insurance product will also be required to get an Australian financial services licence. Lloyd's underwriters and unauthorised foreign insurers will be permitted to handle claims without an Australian financial services licence if they authorise another person who has an Australian financial service licence for handling claims.

The regulations commenced on 19 February 2021.

PAYMENTS

Parliamentary inquiry into mobile payment and digital wallet financial services

On 25 March 2021, the Parliamentary Joint Committee on Corporations and Financial Services [began](#) an inquiry into mobile payment and digital wallet financial services. Submissions close on 21 May 2021. The inquiry will have particular reference to the following:

- the nature of commercial relationships and business models, including any imbalance in bargaining power, operating between providers of mobile payment digital wallet services, on the one hand, and providers of financial services in Australia, merchants and vendors, and consumers, on the other;
- differences between commercial relationships in Australia and other jurisdictions;
- the implications for competition and consumer protection;
- the adequacy, performance and international comparison of Australian legislation, regulations, self-regulation, industry codes, standards and dispute resolution arrangements; and
- any related matter.

PRIVACY AND DATA

Mandatory CCR legislation enacted

Legislation to introduce mandatory credit reporting has been [enacted](#). The *National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Act 2021* (Cth) received assent on 16 February 2021.

Under the mandatory comprehensive credit reporting regime, eligible licensees who on 1 April 2020 were large authorised deposit-taking institutions (**ADIs**) must report credit information on consumer credit accounts to credit reporting bodies. Other credit providers will be subject to the regime if they are prescribed in regulations.

The supply of information under the mandatory regime includes an initial bulk supply of credit information and an ongoing requirement to keep information up-to-date and accurate. By 29 June 2020, large ADIs were required to supply credit information on 50% of the consumer credit accounts within the banking group to all credit reporting bodies that the large ADI had a contract with as of 2 November 2017. The second supply is due by 29 June 2021, when large ADIs must supply credit information on the remaining accounts, including those that opened after 1 April 2020, and those held by subsidiaries of the large ADI, to the same credit reporting bodies as the first bulk supply. ASIC will be responsible for monitoring compliance with the mandatory regime.

The Act also amends the *Privacy Act 1988* (Cth) to permit reporting of financial hardship information within the credit reporting system. A new category of credit information called financial hardship information will be created to accompany repayment history information. When a monthly payment is affected by a financial hardship arrangement, repayment history information will reflect a consumer's ability to meet their obligations under that arrangement rather than their original contract.

Consumer Data Right update

From 1 February 2021, major banks have been required to start sharing phase 3 consumer data for accounts held by individuals and sole traders. Phase 3 products include:

- overdrafts (personal and business)
- business finance
- investment loans

- lines of credit (personal and business)
- asset finance
- cash management accounts
- farm management accounts
- pensioner deeming accounts
- retirement savings accounts
- trust accounts
- foreign currency accounts
- consumer leases.

Consumer Data Standards Australia has [published](#) guidance regarding in-scope products as well as an easy-to-follow phasing [table](#) that summarises the commencement dates for the various data sharing requirements.

The Australian Competition and Consumer Commission (**ACCC**) has [issued](#) revised guidance on joint account rules, providing an overview of the treatment of joint account under the CDR Rules.

The ACCC has also [published](#) guidance material for accredited data recipients who intend to use both Consumer Data Right (**CDR**) and alternate methods of data sharing such as screenscraping. It outlines the things that should be considered when dealing with consumers and non-CDR data.

Review of Credit Reporting Code

The Australian Information Commissioner and Privacy Commissioner [announced](#) on 26 March 2021 that there would be a tender for an independent review of the Privacy (Credit Reporting) Code 2014.

PRUDENTIAL

APRA consults on insurance in super standards

The Australian Prudential Regulation Authority (**APRA**) [released](#) for consultation a revised draft Prudential Standard SPS 250 *Insurance in Superannuation* (**SPS 250**) on 20 January 2021, together with a draft prudential practice guide. Proposed changes to the standard include:

- independent certification of related party insurance arrangements and priority and privilege arrangements;
- that the rules for status attribution for a beneficiary are fair and reasonable; and
- trustees to facilitate easy opt-out of insurance by superannuation members, and to ensure that premiums do not inappropriately erode members' retirement income.

The revised draft SPS 250 is planned to commence on 1 January 2022.

APRA consults on new entrant ADIs

On 18 March 2021, APRA [released](#) a discussion paper on its proposed new approach to licensing and supervising new entrant ADIs, and an accompanying information paper.

APRA proposes two pathways available to obtain an ADI licence, a restricted pathway and a direct pathway. The restricted pathway would lead to a restricted ADI licence, allowing the entity time to build resources and capabilities. A restricted ADI would have lower capital requirements and a \$2 million aggregate cap on deposits.

APRA guidance on divestment transactions

APRA has [released](#) a letter to ADIs providing guidance on managing the risks associated with indemnities in divestment transactions.

Aggregate committed liquidity facility available to ADIs

On 19 February 2021, APRA [released](#) updated aggregate amounts for the 2021 Committed Liquidity Facility established between the Reserve Bank of Australia and certain local ADIs that are subject to the Liquidity Coverage Ratio.

APRA updates FAQs on SME support schemes

On 23 March 2021, APRA [announced](#) that it had updated a frequently asked question for ADIs on the credit risk capital treatment of loans covered by the Coronavirus SME Guarantee Scheme and the SME Recovery Loan Scheme.

AML/CTF

AML/CTF Rules amendments

On 27 January 2021, the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) [released](#) a consultation document on proposed amendments to the AML/CTF Rules. The amendments would affect the following chapters of the Rules:

- Chapter 3 – Correspondent banking
- Chapter 6 – Customer identification and verification
- Chapter 7 – Reliance on customer identification carried out by another reporting entity
- Chapter 10 – Gambling services.

The proposed changes are to align with reforms to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) made by the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020* (Cth). The consultation period closed on 11 March 2001.

Updated regulatory guidance from AUSTRAC

On 29 March 2021, five new regulatory guides were [released](#) by AUSTRAC to assist reporting entities. They cover:

- governance
- money laundering/terrorism financing risk assessments
- ongoing customer due diligence
- international funds transfer instructions reporting
- correspondent banking relationships

Guidance resources have also been [published](#) by AUSTRAC relating to suspicious matter reports, identification procedures and ongoing customer due diligence, and reporting of suspicious financial activity to prevent fraud against the National Disability Insurance Scheme.

DISPUTES AND ENFORCEMENT

AFCA review

Under the legislation establishing the Australian Financial Complaints Authority (**AFCA**), the Minister is required to establish an independent review of the operation of AFCA. The review

has now been announced and the terms of reference have been [released](#) by Treasury. Submissions were due by 26 March 2021.

AFCA amends its rules

AFCA has [amended](#) its Rules in relation to complaints about the conduct of an authorised representative of an AFCA member. AFCA was directed to make the change by ASIC following the judgment of the NSW Supreme Court in *D H Flinders Pty Ltd v Australian Financial Complaints Authority Limited* [\[2020\] NSWSC 1690](#). AFCA says that the judgment highlighted that AFCA's Rules needed to be clearer to ensure that they reflected the same obligations and liabilities for licensees as set out in the Corporations Act. The Rules now reflect the same statutory liability for licensees regarding their representatives as set out in the Corporations Act and the NCCP Act. The updated AFCA Rules apply to complaints received by AFCA from 13 January 2021 onwards.

AFCA monetary thresholds change

AFCA has [announced](#) adjustments to its monetary limits for complaints, including the maximum value of a claim for compensation, the maximum size of a credit facility AFCA can consider a complaint about, and the maximum amount AFCA can award to a consumer or small business for complaints about banking and finance, general insurance, life insurance and investments and advice. The AFCA Rules require AFCA to adjust its monetary limits on 1 January 2021, and then every three years.

ASIC immunity policy launched

On 24 February 2021, ASIC [announced](#) that it had released an immunity policy for certain contraventions of the Corporations Act, including serious offences such as market manipulation, insider trading and dishonest conduct in the course of carrying on a financial services business.

The new policy provides that in certain circumstances, an individual who has engaged with others to manipulate the market, commit insider trading or engage in dishonest conduct when operating a financial services business can seek immunity from both civil penalty and criminal proceedings. ASIC will be responsible for granting civil immunity while the Commonwealth Director of Public Prosecution will be responsible for granting criminal immunity. Immunity will only be available to the first individual who satisfies the immunity criteria and reports the misconduct to ASIC prior to commencement of an investigation into the conduct.

Westpac loses High Court appeal on personal advice

The High Court has ruled against Westpac Banking Corporation (**Westpac**) entities in their appeal in *Westpac Securities Administration Ltd & Anor v Australian Securities and Investments Commission* [\[2021\] HCA 3](#).

The case involved a campaign by Westpac entities to encourage existing members of Westpac super funds to roll-over superannuation accounts held with other entities into their Westpac account. Each member received a letter with a follow-up call from an adviser. The question was whether Westpac was giving personal advice or only general advice to the members. The High Court agreed with the Full Federal Court that personal advice was given.

The main judgment was given by Gordon J, who found that the advice given met the test of personal advice because a reasonable person might expect Westpac to have considered one or more of the client's objectives, financial situation and needs in the circumstances.

CBA misleading conduct leads to \$7m penalty

The Federal Court has [found](#) that Commonwealth Bank of Australia (**CBA**) made false or

misleading representations and engaged in misleading and deceptive conduct when charging a rate of interest on business overdraft accounts that was higher than what customers were advised. CBA admitted to the contraventions, which related to the period from December 2014 to March 2018. CBA disclosed an overdraft interest rate of 16% per annum but due to a systems error, charged more than 1,500 customers a higher interest rate of around 34% per annum. Justice Lee has [ordered](#) that CBA pay a \$7 million penalty for its misconduct.

APRA ends Westpac investigation

APRA [announced](#) on 12 March 2021 that it had closed its investigation into possible breaches of the *Banking Act 1959* (Cth) (the **Banking Act**), including the Banking Executive Accountability Regime (**BEAR**), by Westpac arising from allegations by AUSTRAC that Westpac had breached anti-money laundering and counter-terrorism laws. APRA's investigation also examined the bank's actions to rectify and remediate the issues after they were identified. APRA said that the investigation did not find evidence of breaches of the Banking Act or the BEAR.

Mayfair misleading

In *Australian Securities and Investments Commission v Mayfair Wealth Partners Pty Ltd (No 2)* [\[2021\] FCA 247](#), Anderson J of the Federal Court found that Mayfair Wealth Partners Pty Ltd and related entities controlled by James Macwhinney engaged in misleading and deceptive conduct in relation to promissory notes which were marketed as comparable to, and of similar risk profile to, bank term deposits. Other misrepresentations were found in relation to the marketing of these products, including representations that the products were designed for investors seeking certainty and confidence in their investments and therefore carried no risk of default, and that they were fully secured financial products. The Mayfair entities did not appear in the proceedings.

APRA ups Macquarie Bank requirements

On 1 April 2021, APRA [announced](#) that it was increasing the liquidity and operational risk capital requirements of Macquarie Bank Limited in response to multiple material breaches of prudential and reporting standards.

ASIC suing CBA over monthly access fees

Civil penalty proceedings have been [commenced](#) by ASIC in the Federal Court against CBA in relation to monthly access fees, which ASIC alleges that CBA charged when it was not entitled to do so. The conduct relates to the period from 2010 to 2019. ASIC alleges that nearly \$55 million in fees were charged to almost a million customers when those customers were entitled to fee waivers because they met criteria under their contracts with the bank.

ASIC sues Membo Finance

On 16 March 2021, ASIC [announced](#) that it had commenced civil penalty proceedings in the Federal Court against Membo Finance Pty Ltd (**Membo**) and its sole credit representative Richmond Group Financial Services Pty Limited (**RGFS**). ASIC is alleging that these entities contravened the NCCP Act, including failure to comply with the NCCP Act when customers were experiencing financial hardship. Membo and RGFS carry on a business trading as ClearLoans, providing loans between \$3,000 and \$15,000 on 12 to 60 month terms. All loans are secured by a personal guarantee. ASIC claims among other things that Membo and RGFS did not give written decisions and reasons when hardship requests were declined, failed to issue notices to warn debtors or guarantors of direct debit defaults, and failed to give debtors and guarantors 30 days to correct a default before commencing enforcement proceedings.

TAL found to have breached duty

TAL Life Limited (**TAL**) has been [found](#) to have breached its duty to act with utmost good faith under the *Insurance Contracts Act 1984* (Cth) in relation to a claim made under an income protection policy. TAL had avoided the policy on the basis that the insured had failed to disclose an unrelated prior medical history. Proceedings were brought against TAL by ASIC in December 2019.

ACCC enforceable undertaking from Visa

The ACCC [announced](#) on 10 March 2021 that it had accepted an enforceable undertaking from Visa entities in relation to concerns that they may have limited competition in relation to debit card acceptance through their dealings with large merchants. Since 2017, merchants have been able to choose between Visa or eftpos for the processing of contactless payments made using a Visa branded dual network debit card. The ACCC says that it was concerned that Visa's dealings with merchants could influence their choice of debit card network and diminish competition between Visa and eftpos. In the enforceable undertaking, Visa is prevented from offering strategic merchant rates for credit card payments to merchants on condition that the merchant processes debit card payments through the Visa network. Visa also undertakes in the enforceable undertaking not to increase the cost of processing Visa credit card payments as a consequence of a merchant's choice of the debit card network to process Visa branded dual network debit card payments.

APRA enforceable undertaking from Allianz

APRA has [agreed](#) to accept an enforceable undertaking from Allianz Australia Insurance Limited (**Allianz**) in relation to risk and compliance weaknesses. In the undertaking, Allianz commits to completing a series of transformation programs relating to risk maturity, compliance, conduct and culture in a timeframe agreed with APRA. To provide assurance that these programs are complete and operationally effective, Allianz undertakes to assign a responsible person to be accountable for the successful completion of the transformation programs, provide written confirmation from its board that all components of the transformation programs have been completed, and to appoint independent reviewers to provide written reports on the status of the transformation programs, whether they are operationally effective, and what further work may be required to make them effective.

Charges against Allianz

ASIC [announced](#) on 23 February 2021 that Allianz and AWP Australia Pty Ltd (**AWP**) had been charged with counts of making false or misleading statements regarding the sale of domestic and international travel insurance products. Allianz was the underwriter of the products and AWP was the distributor of the products. The conduct in question was referred to ASIC for investigation by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The criminal prosecution follows civil proceedings that were launched by ASIC in September 2020 against Allianz and AWP for allegedly misleading consumers on Expedia travel websites.

Dover penalty

Dover Financial Advisers Pty Ltd (**Dover**) has been [ordered](#) by the Federal Court to pay a \$1.2 million penalty for engaging in false or misleading conduct and the sole director of Dover, Terence McMaster, has been ordered to pay a \$240,000 penalty for being knowingly concerned in Dover's conduct. The penalties relate to a judgment of the Federal Court on 22 November 2019 which found that Dover had engaged in false, misleading or deceptive conduct in providing a Client Protection Policy to clients over the period from 2015 to 2018.

ASIC takes action against super funds

ASIC has [commenced](#) proceedings in the Federal Court against Statewide Superannuation Pty Ltd (**Statewide**) and in a separate [action](#) against Retail Employees Superannuation Pty Ltd (**REST**). The action against Statewide alleges false or misleading representations made about the insurance cover held by members of the Statewide Superannuation Trust, of which Statewide is the trustee. The action against REST alleges that REST made representations that discouraged members from transferring some or all of their funds to another superannuation fund.

ASIC action against CommSec

Civil penalty proceedings have been [commenced](#) by ASIC in the Federal Court against Commonwealth Securities Limited (**CommSec**) and Australian Investment Exchange Limited (**AUSIEX**), alleging that there have been breaches of market integrity rules, the Corporations Act and (in the case of CommSec) the *Australian Securities and Investments Commission Act 2001* (Cth) relating to systemic compliance failures in the delivery of financial services. CommSec and AUSIEX have cooperated with ASIC in investigating breaches and have entered into a statement of agreed facts and contraventions.

ASIC sues NAB on overcharged fees

On 25 February 2021, ASIC [announced](#) that it had commenced proceedings against National Australia Bank Limited (**NAB**) in the Federal Court in relation to fees charged by NAB for making certain periodic payments when it was not entitled to under the bank's contracts with its customers. ASIC alleges that NAB identified the error in charging customers in October 2016 but did not lodge a breach report with ASIC until July 2018.

ASIC proceedings against Westpac over CCI

Civil penalty proceedings in the Federal Court have been [commenced](#) by ASIC against Westpac. ASIC alleges that Westpac mis-sold consumer credit insurance (**CCI**) with credit cards, and other credit facilities, to customers who had not agreed to buy the policies. The legal action relates to add-on insurance products sold with credit cards and lines of credit to customers in 2015.

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