Bright Law®

Regulatory compliance updates

National Credit Providers Association Regulatory Report

July 2019

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Introduction

This is a summary of some of the regulatory changes affecting financial services in June and July 2019.

For more recent information visit www.brightlaw.com.au or call me.

Regards
David Jacobson

IMPORTANT NOTE

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ASIC proposal to intervene in short term credit

ASIC has released Consultation Paper 316 Using the product intervention power: Short term credit (CP 316) on the first proposed use of its new product intervention power.

Background

ASIC is targeting a model involving a short term credit provider and its associate who charge fees under separate contracts. When combined, these fees can add up to around 990% of the loan amount.

ASIC is proposing to make an industry-wide product intervention order by legislative instrument to prohibit credit providers and their associates from providing short term credit and charging for additional or collateral services where the total fees that can be charged exceed the maximum permitted under the short term credit exemption to prevent future specific use of the short term lending model structured around this exemption.

The model of lending is structured such that it benefits from the exemption in s6(1) of the National Credit Code (Sch 1 of the National Credit Act), and which involves the provision of short term credit at high cost to consumers, including consumers who may be on low incomes or in financial difficulties and so may not reasonably be able to afford the repayments.

While ASIC is presently aware of two firms currently using this model – Cigno Pty Ltd and Gold-Silver Standard Finance Pty Ltd – the proposed product intervention order would apply to any firm using this type of business model.

ASIC will review and consider all submissions made before determining appropriate regulatory action.

It will not make a decision on the proposed exercise of the product intervention power in relation to short term credit until the close of consultation.

ASIC consults on its Product Intervention Power

ASIC has released Consultation Paper 313 Product intervention power (CP 313) and a draft regulatory guide which indicates that it intends to take a principles-based approach to its new product intervention power. Background.

ASIC can take a range of temporary actions including banning a product or product feature, imposing sale restrictions, amending product information or choice architecture.

To assist consultation, the paper provides case studies of past products and practices to illustrate the circumstances in which ASIC may have contemplated using the product intervention power (had it been available) to address consumer detriment identified at the time.

The ASIC Chair recently noted that ASIC will consult on the Design and Distribution Obligations by the end of the year (noting that there is a 2-year transition on DDOs).

ASIC responsible lending update

In a recent speech the ASIC Chair gave the following update on its review of responsible lending:

> *We are updating our responsible lending guidance to provide more certainty for lenders and mortgage brokers. This will encourage more consistent practices across the industry, while retaining flexibility for licensees to appropriately tailor lending processes to the circumstances of borrowers.*
>
> *We are conducting a public consultation to update our responsible lending guidance.*
>
> *And, for the first time as part of this process, we will be holding public hearings to robustly test some of the issues and views that have been raised in submissions.*
>
> *I will take the opportunity here to acknowledge that while the responsible lending requirements have remained unchanged for almost a decade, and that we have been consistent in our expectations of those requirements, we know house prices have declined over the past year, with fewer consumers seeking finance.*
>
> *Through any economic cycle, responsible provision of credit is critical to the long-term sustainability of the economy as well as being a*

cornerstone consumer protection. This is why we have the responsible lending requirements and why we are consulting to update our expectations on them.

Background

UPDATE
The public hearings will take place during August. The hearings will be held in Melbourne and Sydney, but may involve participants from other parts of Australia.

Submissions.

High Court majority decides "book up" not unconscionable conduct

In Australian Securities and Investments Commission v Kobelt [2019] HCA 18 the High Court of Australia, in a 4:3 majority decision, dismissed ASIC's appeal against the decision of the Full Federal Court that Mr Lindsay Kobelt, former owner and operator of Nobby's Mintabie General Store in the remote South Australian APY Lands was not guilty of unconscionable conduct by operating a system of "book up" credit.

The High Court did not change the Full Federal Court's decision that Mr Kobelt had engaged in unlicensed credit activity when selling goods and motor vehicles on "book up" credit to his customers, most of whom were Aboriginal . Background.

The appeal focussed on the meaning of "unconscionable conduct".

A majority of the Court held that Mr Kobelt's conduct was not unconscionable. The majority held that, although the book-up system rendered the customers more vulnerable to exploitation, no feature of his conduct exploited or otherwise took advantage of the Anangu customers' vulnerability. The basic elements of the book-up system were also understood and voluntarily accepted by the Anangu customers. The Anangu customers' acceptance of the terms on which book-up credit was supplied was not the product of their lack of financial literacy, but rather reflected aspects of Anangu culture not found in mainstream Australian society.

The minority judgments concluded that unconscionable conduct was proved.

Justices Nettle and Gordon found that Mr Kobelt did unconscientiously take

advantage of his customer's vulnerability, stating:
"…it is because a transaction that is voluntarily entered into by someone under a special disadvantage that unconscionability, including statutory unconscionability, developed, in order to ensure that persons who are vulnerable and unable to protect their own interests are not the victim of conduct by a stronger party in unconscientiously taking advantage of that vulnerability".

Justice Edelman also said it was wrong to conceive that the Anangu customers 'chose' the system of credit stating that "the conclusion of unconscionability cannot be avoided by pointing to this so-called 'choice' between Mr Kobelt's system of credit and no credit at all". There were no other options to purchase goods and services leaving book up as the last resort.

Parliamentary legislative agenda for winter and spring sittings 2019

The Government has released a list of priority Bills for introduction and passage before the end of 2019 including the following:

Currency (Restrictions on the Use of Cash) Bill
This Bill will introduce criminal offences for transacting in cash in excess of $10,000.

Transactions in excess of $10,000 would need to be made using the electronic payment system or by cheque.

It is expected that the $10,000 cash payment limit will remove the need for Threshold Transaction Reports.

Background.

Treasury Laws Amendment (Consumer Data Right) Bill
This Bill will create a right for consumers to access their banking (and other designated sectors) data in a form that facilitates its transfer and use and to instruct their banking (and other designated sectors) provider to share their data with nominated third parties.
Background.

Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill
This Bill will turn off the grandfathering provisions that allow financial advisers to

receive conflicted remuneration under legacy remuneration arrangements and require entities that previously paid grandfathered conflicted remuneration to financial advisers to redirect the payment to consumers.
Background.

Other Bills, not marked as a priority, include the Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill which will implement technical recommendations from the 2016 statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. But this Bill is not expected to regulate Designated Non-Financial Businesses and Professions, such as real estate agents, lawyers and accountants.

Re-introduced Bills

The Government has already re-introduced the following Bills which did not pass in the previous Parliament:
Treasury Laws Amendment (2018 Measures No. 2) Bill 2019 to expand the operation of the financial technology sandbox regime (Background);
Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019 to prohibit creditor-defeating dispositions of company property (Background);
Treasury Laws Amendment (Putting Members' Interests First) Bill 2019 dealing with superannuation fund insurance for low-balance accounts and members under 25.

AFCA's Six month report: key issues

AFCA has released its Six month report. More interesting than the raw number of 35,263 complaints received are the type of complaints and AFCA's approach to resolving them.

Systemic issues
With respect to its obligation to report systemic issues and contraventions of the law to ASIC, AFCA identified 16 potential serious contraventions and other breaches. At the end of April it also had 85 definite systemic issue investigations open.

Common issues AFCA is currently investigating include:

- Misleading conduct;
- Conduct of employee/authorised representatives;
- Adequacy of claims handling process;
- Processing errors.

Method of resolution of complaints
87.7% of AFCA members had no complaints lodged against them in the first six months.

Of the members who had complaints:

- 64 per cent were resolved by the financial firm;
- 10 per cent were resolved after negotiations or conciliation;
- 3 per cent were resolved after a preliminary view or determination;

- Of those that were resolved after a preliminary view, 70 per cent were in favour of the financial firm;
- Over 72 per cent of the determinations issued were in favour of the financial firm.

Members pay a complaint fee which increases with each stage of the process.

Fairness project
AFCA is undertaking a 'fairness project' to map community expectations and produce a set of criteria for fairness which can be plainly understood and will explain how AFCA assesses fairness in any given complaint.

AFCA says this approach will ensure it delivers clear, consistent and quality decision making and will set the bar for financial firms when applying fairness to their own internal dispute resolution processes.

Analysis of complaints
Banking and finance complaints: 61 per cent of total received by AFCA. 67 per cent of complaints received related to the four largest banks. In the future AFCA will classify 'Mutual Banks' as a category separate from 'Banks', 'Credit providers' and 'Superannuation'.

Top five banking and finance issues

- Credit reporting;
- Unauthorised transactions;
- Responsible lending;
- Misleading product/service information;
- Incorrect fees/ costs.

AFCA made particular note that the high number of unauthorised transaction complaints shows that financial firms need to do more to ensure that they have appropriate systems in place to detect fraudulent transactions, including in relation to financial elder abuse.

Investments and advice complaints: 5 percent of total of complaints received.

Top 5 investments and advice issues

- Failure to follow instructions/agreement;
- Inappropriate advice;
- Failure to act in client's best interests;
- Incorrect fees/costs;
- Service quality.

Superannuation complaints: 9 per cent of total complaints.

Top five superannuation issues

- Incorrect fees/costs;
- Delay in claim handling;
- Account administration error;
- Death benefit distribution;
- Denial of claim.

Life insurance: 2 per cent of total complaints received.

Top five life insurance issues

- Denial of claim;
- Incorrect premiums;
- Delay in claim handling;
- Claim amount;
- Cancellation of policy.

General insurance: 23 per cent of all complaints.

Top five general insurance issues

- Delay in claim handling;
- Claim amount;
- Denial of claim – exclusion/ condition;
- Denial of claim;
- Service quality.

Consumer Data Right Bill re-introduced

The Treasury Laws Amendment (Consumer Data Right) Bill 2019 has been re-introduced into the House of Representatives after it lapsed before the election. If passed, it will amend the Competition and Consumer Act 2010, the Privacy Act 1988, and the Australian Information Commissioner Act 2010 to introduce a consumer data right. Background.

The CDR provides individuals with a right to efficiently and conveniently access information held by businesses about the transactions they enter into as consumers and to authorise secure access to this data by trusted and accredited third parties.

Individuals will not be obliged to consent to the use of their data.

The CDR will also require businesses to provide public access to information on specified products they have on offer.

The Government has committed to applying the CDR to the banking, energy and telecommunications sectors, and eventually across the economy. The CDR relating to banking data is commonly referred to as “Open Banking”.

Open Banking trial

The CSIRO Data Standard Body has released details of bank preparation for Open Banking

Three banks, ANZ, The Commonwealth Bank of Australia (CBA) and Westpac have now publicly released their Product Reference Data through application

programming interfaces (APIs) encompassing the initial four product categories covered by the Consumer Data Right (CDR) regime. This is a voluntary release by the banks whilst legislation is considered by Parliament.

The product categories covered include transaction accounts, term deposits, credit card accounts and debit card accounts.

The Product Reference Data covered is general product data and does not include any personal customer information. Specific customer information will only ever be transferred under the CDR regime with the explicit consent of customers and only to ACCC accredited third parties.

A final draft of the consumer data standards has been released, subject to any legislative changes, suitable for pilot testing of the initial Consumer Data Right (CDR) implementation.

AML/CTF Update 2019

The Government has announced that it intends to introduce the Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill into Parliament before the end of 2019 to cover technical issues and clarify aspects of Australia's money laundering offences. Background.

The Bill (also known as Phase 1.5 of the AML/CTF regime) will include:

- changes to the use of AUSTRAC financial intelligence;
- streamlining the registration of remittance providers;
- enhancing the operation of customer due diligence obligations; and
- simplifying the cross-border reporting regime.

It will not include Designated Non-Financial Businesses and Professions.

The Government also plans to introduce and pass the Currency (Restrictions on the Use of Cash) Bill to introduce criminal offences for transacting in cash in excess of $10,000. UPDATE: Draft Currency Bill released.

Transactions in excess of $10,000 would need to be made using the electronic payment system or by cheque. Background.

Draft Currency (Restrictions on the Use of Cash) Bill 2019 released

The Government has released for public consultation the exposure draft Currency (Restrictions on the Use of Cash) Bill 2019 and accompanying Exception Instruments to implement an economy-wide cash payment limit from 1 January 2020 and to remove most of the threshhold transaction reporting obligations for AUSTRAC reporting entities from 1 January 2021.

The limit applies to all cash transactions equal to or in excess of $10,000, except for those that meet the conditions specified in the draft Currency (Restrictions on the Use of Cash—Excepted Transactions) Instrument 2019.

The cash payment limit will not apply to transactions where an authorised deposit-taking institution accepts deposits or pays out withdrawals. Further, a reporting entity that provides foreign currency exchange services regulated under the AML/CTF Act will also be exempt as this service inherently involves cash.

From 1 January 2020 it will be a criminal offence to make or accept a payment from businesses that includes $10,000 or more of cash. It will also be an offence to make or accept a cash donation equal to or in excess of $10,000. The maximum penalty is up to two years imprisonment and/or 120 penalty units (currently $25,200).

The cash payment limit will apply to the total price of a single supply of goods or services, regardless of whether the price is split into a series of payments over time.

The total cash payments made towards the final price paid must not equal to or exceed $10,000. The remainder of the payments must be made electronically or by cheque.

Two of the offences apply if an entity makes or accepts a cash payment or series of payments, with strict liability applying to the circumstances of the payment including cash in equal to or exceeding the cash payment limit. That is, the offences are committed regardless of whether the entity intended or was reckless about whether the payment or series of payments included cash that equalled or exceeded the cash payment limit. The other two offences apply if the entity intended or was reckless about making or accepting such a payment or a series of payments.

All of the offences provide that the offence does not apply to a payment if either the payment is one that the Treasurer has specified by legislative instrument. The offences also do not apply to the making or acceptance of a payment in circumstances specified by the Treasurer by legislative instrument.

Excepted transactions
The payments not subject to the cash payment limit are:

- payments related to personal or private transactions (other than transactions involving real property);
- payments that must be reported by an entity under anti-money laundering and counter-terrorism legislation, provided, broadly, the entity with a reporting obligation complies (or is reasonably believed to have complied) with their obligations under that legislation;
- payments made or accepted by a public official in which the public official is legally required to make or accept a cash payment in the course of their duties;
- payments that only exceed the cash payment limit because the payment is part of a transaction involving collecting, holding or delivering cash and this is undertaken in the course of an enterprise of collecting or delivering cash (i.e., providing cash-in-transit services);
- payments that only exceed the cash payment limit because payment is or includes an amount of digital currency; and
- payments that occur in situations where no alternative method of payment could reasonably be used.

Changes to reporting obligations

From 1 January 2021 to give effect to an economy-wide cash payment limit, the mandatory threshold transaction reporting obligation will be removed for all reporting entities regulated under the AML/CTF Act, other than those engaging in the exempt services. These entities will not be required to report payments of $10,000 or more as they cannot legally receive such payments.

ADI’s and reporting entities that provide foreign currency exchange services must continue to submit threshold transaction reports when they engage in transactions involving an amount not less than $10,000.

Buy now, pay later AML/CTF Compliance

AUSTRAC has ordered the appointment of an external auditor to Afterpay Pty Ltd (Afterpay) to examine its compliance with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the AML/CTF Act) and provide a report within 120 days.

The external auditor will examine Afterpay's:

- Governance and oversight of decisions related to its AML/CTF framework;
- Identification and verification of customers;
- Suspicious matter reporting obligations;
- AML/CTF program, including the development of its money laundering and terrorism financing risk assessment.

Austrac's notice to Afterpay says that it has "reasonable grounds to suspect that Afterpay is a reporting entity that has convened and/or is contravening sections 32 and 81 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006".

Section 32 of the AML/CTF Act requires reporting entities to verify their customers before providing a designated service.

Section 81 prohibits a reporting entity from providing a designated service to a customer without having an AML/CTF program in place.

According to Afterpay's website:

- a customer does not need to register before their first Afterpay purchase;
- Once their first order is approved, a customer's Afterpay account is created;

- Afterpay uses a mandatory ID verification process to ensure a customer’s eligibility.

What is a small business?

Although the protections for small business credit are increasing, the definitions of what is a small business are inconsistent across financial services legislation and rules particularly in relation to the thresholds for employee headcount and lending amounts that determine whether a business is a small business for the relevant purpose.

Different lenders may apply wider definitions.

The National Credit Act does not apply to small business credit.

Here is a summary.

AFCA Rules

For small business loans (for small businesses with up to 100 employees), AFCA can consider a credit facility up to $5 million with a compensation limit of $1 million. For a business that is part of a group of related companies, AFCA cannot deal with a complaint lodged by a business if the business is part of a group that has 100 employees or more.

Australian Securities and Investments Commission Act 2001, section 12BC(2) (consumer protection)
That the business employs less than 20 employees or, if the business is a manufacturing business, the business employs less than 100 employees

Australian Securities and Investments Commission Act 2001, section 12BF(4) (unfair contracts for financial services)
That the business employs less than 20 employees, and the upfront price payable under the contract does not exceed $300,000, or if the contract has a duration of

more than 12 months, the upfront price payable under the contract does not exceed $1,000,000

Competition and Consumer Act, Schedule 2, section 23(4)(unfair contracts for goods and services)
That the business employs less than 20 employees and the upfront price payable under the contract does not exceed $300,000, or if the contract has a duration of more than 12 months, the upfront price payable under the contract does not exceed $1,000,000

Corporations Act 2001, section 761G(12) (small businesses as retail clients)
That the business employs less than 20 employees, or, if the business is a manufacturing business, the business employs less than 100 employees

Australian Small Business and Family Enterprise Ombudsman Act 2015, section 5
That the business employs less than 100 employees or the business has less than $5 million in revenue in a year

Fair Work Act 2009, section 23 (unfair dismissal)
That a small business employer employs less than 15 employees

Income Tax Assessment Act 1997, section 328-110
That a small business entity has an annual turnover of less than $10 million

Banking Code of Practice
A business is a “small business” if at the time it obtains the banking service all of the following apply:
a) it had an annual turnover of less than $10 million in the previous financial year; and
b) it has fewer than 100 full-time equivalent employees; and
c) it has less than $3 million total debt to all credit providers including:
i. any undrawn amounts under existing loans;
ii. any loan being applied for; and
iii. the debt of all its related entities that are businesses.

The **Financial Services Royal Commission Final Report** recommended that the definition of ‘small business’ in the Banking Code be amended to any business or group employing fewer than 100 full-time equivalent employees, where the loan

applied for is less than $5 million.

Code of Lending Practice for AFIA Online Small Business Lenders

Online Small Business Loan means a loan where:

(a) the finance is provided (or to be provided) for a purpose that is wholly or predominantly a business or commercial purpose and where the National Credit Code is not applicable to the finance provided (or to be provided); and

(b) the finance provided (or to be provided) is Unsecured or is secured by a guarantee. For the avoidance of doubt, the following types of finance, or any arrangement of a similar nature, are not an Online Small Business Loan for the purposes of the Code:

a) equipment finance in which the lender has an interest of any kind in the financed goods or equipment;

b) a rental agreement or instalment purchase agreement;

c) an operating lease;

d) a finance lease;

e) invoice financing of any kind; and

f) a factoring arrangement or finance facility.

Disclosure of Business Tax Debts

The Government has released for consultation draft Taxation Administration (Tax Debt Information Disclosure) Declaration 2019 which will declare a class of entities whose tax debt information may be disclosed to credit reporting bureaus by taxation officers.

Entities that fall within the declared class of entities under the Declaration are entities that:

- are registered in the Australian Business Register, other than as deductible gift recipients, complying superannuation funds, registered charities or government entities; and
- have one or more tax debts, the total of which is at least $100,000, that have been overdue for more than 90 days; and
- after taking reasonable steps, the Commissioner of Taxation has been able to confirm with the Inspector-General of Taxation that no complaint remains active by the entity concerning the disclosure of tax debt information of the entity that is, or could be, the subject of an investigation under paragraph 7(1)(a) of the Inspector-General of Taxation Act 2003.

If an entity is effectively engaging with the Commissioner to manage a tax debt or taking action in accordance with the law to dispute the debt, that tax debt will not be taken into account when working out whether the entity has a total tax debt of at least $100,000 that has been overdue for more than 90 days.

Background

Financial elder abuse: how to respond

In its Six month report, AFCA observed that the high number of unauthorised transaction complaints shows that financial firms need to do more to ensure that they have appropriate systems in place to detect fraudulent transactions, including in relation to financial elder abuse.

AFCA says that in complaints it sees arising from alleged financial elder abuse, a common claim is that the financial firm and its employees should have recognised financial abuse was taking place and could have taken steps to prevent loss. It acknowledges that whether potential abuse was visible at the time and what could and should have been done are always difficult issues.

AFCA has published its Approach to financial elder abuse (practically identical to FOS's Approach) to assist financial firms, consumers and consumer advocates to recognise the warning signs of financial elder abuse and to understand how it applies legal principles, industry codes and good industry practice when considering these types of complaints.

When AFCA considers complaints and issues of financial elder abuse are raised, it will ask:

- Were there red flags or warning signs which may have been indicators of financial abuse of a vulnerable elderly person?
- Did the financial firm exercise its duty to take reasonable care and skill, and question the customer's authorisation of a transaction?
- If so, should the financial firm have delayed the transaction or taken other preventive action?

AFCA will consider all circumstances surrounding the financial transaction and whether the financial firm took appropriate action to determine if financial elder abuse was occurring.

What can financial firms do?
AFCA's Approach refers to the Banking Code of Practice.

The 2019 Banking Code of Practice says that staff must "act with sensitivity, respect and compassion" towards older customers who appear to be in a vulnerable situation and refer them to external support, if appropriate, whilst being respectful of their need for confidentiality.

AFCA also refers to ABA Industry Guideline – Financial Abuse and Family and Domestic Violence as an example of good industry practice.

AFCA expects a financial firm to talk to the elderly person separately and in private about the financial transaction.

It says financial firm employees should escalate their concerns to the appropriate senior person before conducting the financial transaction.

It also says a financial firm may consider declining or delaying the transaction, for example by asking the customer to come back the next day if they still want to proceed.

AFCA does not have any other specific recommendations.

What if you still have concerns? In appropriate cases action might include a referral to the Police or the Office of the Public Guardian (or equivalent in each State).

Illegal Phoenixing update

The Government has introduced the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019 into Parliament. Background.

The Bill introduces new phoenixing offences into the Corporations Act to prohibit creditor-defeating dispositions of company property, penalise those who engage in or facilitate such dispositions, and allow liquidators and ASIC to recover such property.

A creditor-defeating disposition is a disposition of company property for less than its market value (or the best price reasonably obtainable) that has the effect of preventing, hindering or significantly delaying the property becoming available to meet the demands of the company's creditors in winding-up.

A transaction may be voidable if it is a creditor-defeating disposition and is made when the company is insolvent, or, because of the disposition, the company immediately becomes insolvent or enters external administration within the following 12 months.

In addition, directors will be held accountable for misconduct by preventing directors from improperly backdating resignations or ceasing to be a director when this would leave the company with no directors.

ASIC CCI review report

ASIC has published Report 622 Consumer credit insurance: Poor value products and harmful sales practices (REP622) which reviews the sale of consumer credit insurance (CCI) by 11 major banks and other lenders for the period 2011 to 2018. It found that CCI sales practices and product design are delivering poor outcomes for consumers.

Findings

- CCI is poor value for money: For CCI sold with credit cards, consumers were paid only 11 cents in claims for every dollar they paid in premiums (and the more cover types in the policy, the lower its claims ratio). For all CCI sold, this increased to only 19 cents in claims paid.
- CCI sales practices cause consumer harm: CCI was sold to consumers who were ineligible to claim or unlikely to benefit or need cover. Sales staff used pressure selling and other unfair sales practices. Consumers were given non-compliant personal advice to buy unsuitable policies. Consumers were charged CCI premiums with no current loan. Many lenders did not have consumer-focused processes to help consumers in hardship who had a CCI policy to lodge a claim.
- Lenders are exiting the CCI market: During ASIC's work on CCI, 7 of 8 lenders have stopped selling CCI with credit cards, 5 of 9 lenders have stopped sales with personal loans, and 4 of 9 lenders have stopped sales with home loans.

ASIC's expectations and standards

ASIC expects lenders and insurers to meet the standards set out in the report or cease selling CCI until they do.

ASIC's expectations include:

- all CCI lenders should incorporate a four-day deferred sales model for all CCI products across all channels, not just those entities that subscribe to the Banking Code of Practice.
- lenders and insurers should design and offer products with significantly higher claims ratios.

ASIC action: Enforcement and investigations

ASIC is investigating sales of CCI that did not comply with the law before the recent strengthening of ASIC's powers and penalties. For future conduct, ASIC says it will use its enhanced powers and penalties, including the product intervention power where there is a risk of significant consumer detriment, and civil penalties for breaches of the duty to do all things necessary to ensure that financial services are provided efficiently, honestly and fairly.

Quarterly Statement by the Council of Financial Regulators

The latest Quarterly Statement by the Council of Financial Regulators shows the heightened regulatory activity in the financial sector.

The Council consists of the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC), the Australian Treasury and the Reserve Bank of Australia (RBA). The latest meeting included representatives from the ACCC, the Australian Taxation Office and the Australian Transaction Reports and Analysis Centre (AUSTRAC).

Topics covered included:

- Financing conditions and the housing market including ASIC's public consultation on its responsible lending guidance;
- ASIC's product intervention powers;
- the implications of new product design and distribution obligations for retail holdings of bank-issued Additional Tier 1 (AT1) instruments;
- APRA's policy work, including changes to its guidance on the minimum interest rate used in serviceability assessments for residential mortgage lending and APRA's planned increases in the capital of the major banks to support orderly resolution;
- the design of a crisis management legislative framework for clearing and settlement facilities;
- a potential regulatory framework for payment providers that hold stored value;
- an online tool to improve the transparency of the mortgage interest rates paid

- on new loans using a new data collection requirement;
- the implications of the changing climate, and society's response to those changes, for the Australian financial system.

The Council's updated Charter emphasises the Council's financial stability objective, while also recognising the benefits of a competitive, efficient and fair financial system.

CBA enforceable undertaking on data control

The Office of the Australian Information Commissioner has announced that the Commonwealth Bank of Australia (CBA) will be required to substantially improve its privacy practices under a court-enforceable undertaking given to the Australian Information Commissioner and Privacy Commissioner.

The EU follows inquiries by the Office of the Australian Information Commissioner (OAIC) into CBA's handling of personal information in relation to two data incidents:

- the loss of magnetic storage tapes containing historical customer statements for up to 20 million bank customers by a third-party provider to CBA in May 2016;
- inadequate internal access controls to customer data reported to the OAIC in August 2018 related to the sale of CBA's insurance entity Colonial Mutual Life Assurance Society Ltd when it identified 16 shared applications containing CMLA customer information which may have been accessible to non-CMLA employees of the Bank.

The enforceable undertaking requires CBA to review its privacy policies, procedures and retention standards, and provide staff training to ensure compliance. CBA must also assess its IT services and systems to make sure it takes appropriate steps to control access to customers' personal information.

The undertaking will be overseen by an independent external reviewer, who will consult with and report to the OAIC on CBA's compliance.

The OAIC may take court action at any stage if CBA does not fully comply with the

terms of the undertaking.