

Financial Services and Credit Monthly Update

April 2024

CONSUMER CREDIT

AFCA concerned over increasing complaints regarding hardship

The Australian Financial Complaints Authority (AFCA) has expressed [concern](#) at rising complaints relating to financial difficulty, especially the handling of requests for hardship assistance by lenders. Complaints with AFCA regarding financial difficulty are reported to have risen by 25% in 2023, with a third of the 5,396 complaints received related to home loans. Furthermore, more than half of the financial difficulty complaints recorded were in relation to the lender's failure to respond to, or the quality of the response to, a customer's request for hardship assistance, and this is particularly prevalent amongst small lenders and Buy No Pay Later providers.

Other issues observed by AFCA include default notices being issued to consumers who had agreed to repayment arrangements, unnecessary barriers to financial counsellors being imposed by lenders, and the prohibited act of lenders attempting to recover debt while a matter is still before AFCA.

COMPETITION

Merger reforms

The Federal Government has [published](#) its proposed reforms to Australia's merger control system following a review.

The reforms are aimed at making the merger approval system faster, stronger, simpler, more targeted and more transparent.

A mandatory merger control system will be introduced, with the Australian Competition and Consumer Commission (ACCC) as the first-instance decision-maker. Mergers can proceed unless the ACCC believes they are likely to substantially lessen competition or create market

power. The ACCC will have set timeframes to review mergers, and decisions can be reviewed by the Australian Competition Tribunal.

The system will have a single pathway, replacing the current fragmented approach. Mergers will be risk-based, with clear information requirements upfront to enable quick approval of benign cases. Higher-risk mergers will face more scrutiny and cost recovery fees.

Most mergers will be able to proceed within 30 working days if no concerns, or a 15-day fast-track option. In-depth reviews will take 4.5 months maximum. The ACCC will maintain a public merger register and publish reasons for decisions.

The new merger control system will take effect from 1 January 2026.

CONSUMER PROTECTION

Inquiry into financial services regulatory frameworks in relation to financial abuse

The Parliamentary Joint Committee on Corporations and Financial Services has [commenced](#) an inquiry into the financial services regulatory framework in relation to financial abuse. The closing date for submissions is 14 June 2024. Information for submissions can be found [here](#).

ESG

APRA issues letter on forthcoming climate-risk self-assessment survey

The Australian Prudential Regulation Authority (APRA) has [issued](#) a letter to all APRA-regulated entities on the scope, purpose and timing of the 2024 voluntary climate risk self-assessment survey. The survey aims to improve the understanding of the approaches being taken by APRA-regulated entities to identify, assess and manage climate-

related financial risks. The survey is also intended to support incorporating climate-related risks into APRA's supervisory assessment and improve comparability, benchmarking and practices.

INSOLVENCY

Consultation on misconduct reporting guidance for external administrators and controllers

The Australian Securities and Investments Commission (ASIC) has [released](#) a consultation paper on proposed updates to its Regulatory Guide 16 for external administrators and controllers in relation to reporting and lodging statutory reports about alleged misconduct. The proposed updates aim to provide greater clarity on ASIC's expectations of external administrators and controllers' compliance with the reporting obligations, and the approach ASIC takes in relation to the reports it receives. The consultation closes on 6 June 2024.

FINANCIAL SERVICES

Review of wholesale investor and client test

The Parliamentary Joint Committee on Corporations and Financial Services is [seeking](#) submissions in relation to proposed reforms regarding the wholesale investor test for offers of securities and the wholesale client test for offers of financial products and services under the *Corporations Act 2001* (Cth). The closing date for submissions is 15 May 2024.

PRUDENTIAL

APRA consults on minor updates to prudential framework for ADIs and insurers

APRA has [released](#) for consultation a set of minor updates to the prudential framework for authorised deposit-taking institutions (ADIs) and general, life and private health insurers. The proposed minor updates are mainly technical clarifications. The consultation closes on 3 May 2024.

SUPERANNUATION

Consultation on transfer balance credit provisions for successor fund transfers

The Federal Government is [seeking](#) submissions on draft legislative amendments to the superannuation transfer balance credit provisions for individuals with a capped defined benefit income stream (CDBIS) to avoid an adverse impact arising from a

successor fund transfer between superannuation funds.

Under the current regime, a member's transfer balance may be impacted because of the original income stream being treated as ceasing and a new one commencing. This results in a new valuation of the CDBIS being required, which can adversely lead to a higher value for transfer balance purposes.

The draft legislation seeks to amend the relevant provisions so that credits and debits arising due to a successor fund transfer for members with a CDBIS are equal and can be offset, so that the member's transfer balance is not affected by the successor fund transfer.

The consultation closes on 24 April 2024.

DISPUTES AND ENFORCEMENT

HSBC penalised for alleged breaches of CDR rules

HSBC Bank Australia Limited (HSBC) has [paid](#) a total of \$33,000 in penalties after being issued with two infringement notices for alleged breaches of the Consumer Data Right (CDR) rules by the ACCC.

ASIC appeals Finder Wallet decision

ASIC has [appealed](#) the Federal Court's decision which had dismissed ASIC's claims that Finder Wallet Pty Ltd allegedly provided unlicensed financial services, breached product disclosure requirements and failed to comply with design and distribution obligations in relation to its crypto-asset related product 'Finder Earn'. The original Federal Court decision did not agree with ASIC's allegation that the Finder Earn product was a debenture.

AFSL 'licensee for hire' firm penalised for breaching general obligations

The Federal Court has [imposed](#) a \$1.25 million penalty on wholesale licensee Lanterne Fund Services Pty Ltd (Lanterne) for non-compliance with a number of general conduct obligations of Australian financial services licence (AFSL) holders. Lanterne conducted a 'licensee for hire' business model which authorised 60 corporate authorised representatives and 205 authorised representatives. The businesses operated under Lanterne's AFSL included various financial services, schemes and funds with a total of up to \$1.685 billion in funds under management. In response to ASIC's allegations, Lanterne admitted to deficiencies in its risk and compliance and other AFSL obligations.

Receivers appointed over digital assets of blockchain mining companies

ASIC has [commenced](#) proceedings against blockchain mining companies NGS Crypto Pty Ltd, NGS Digital Pty Ltd and NGS Group Ltd (**NGS Companies**) and their sole directors. The Federal Court has made orders appointing receivers over the digital assets of the NGS Companies and of the directors based on ASIC's concerns that the digital assets invested in by investors were at risk of dissipation and receivers were needed to protect the assets.

ASIC alleges that the NGS Companies provided unlicensed financial services and targeted Australian investors to invest in blockchain mining packages with fixed-rate returns using cryptocurrency. NGS Companies encouraged investors to obtain the cryptocurrency investment funds by transferring funds from regulated super funds to their self-managed super funds and then converting into cryptocurrency. ASIC's investigations revealed over 450 Australians invested approximately USD\$41 million through the NGS Companies.

Sunshine Loans liable for charging customer prohibited fees

The Federal Court has [found](#) that Sunshine Loans, a small amount lender, breached credit legislation by entering into over 670,000 contracts which imposed an amendment or rescheduling fee that is prohibited under the *National Credit Code* between July 2016 and November 2020. Sunshine Loans was found to have required payment of these prohibited fees by consumers over 12,000 times and to have accepted payments on over 8,000 occasions, which amounted to nearly \$300,000.

Financial services misconduct compensation scheme commences operation

The Compensation Scheme of Last Resort (**CSLR**) has [begun](#) processing claims for compensation payments from eligible customers who have unpaid determinations from AFCA relating to the provision of personal financial advice, credit intermediation, securities dealing and credit provision. The CSLR provides compensation payments of up to \$150,000 to eligible consumers.

ASIC appeals Auto & General unfair contract term decision

ASIC has [appealed](#) the Federal Court's decision on 22 March 2024 to dismiss its claim against Auto & General Insurance Company Limited (**A&G**) for an alleged unfair contract term. A&G's house and contents insurance policies included a term which required policyholders to notify A&G of any changes

to their home and contents, and stated that the policyholders' failure to do so would entitle A&G to reduce, refuse to pay claim, cancel or not offer a contract renewal. ASIC had alleged that this was an unfair contract term under the *Australian Securities and Investments Commission Act 2001* (Cth).

Macquarie Bank fined for failure to monitor third party fee withdrawals

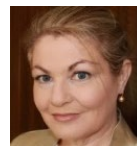
The Federal Court has [imposed](#) a penalty of \$10 million on Macquarie Bank Ltd for failing to have an effective monitoring system to prevent and detect unauthorised fee transactions by third parties, including financial advisers, on customer cash management accounts through the bank's bulk transacting facility between 1 May 2016 and 15 January 2020.

Macquarie enabled customers to authorise third parties to withdraw third party fees from their accounts and also provided third parties with a bulk transacting tool to make multiple withdrawals across multiple customer accounts simultaneously. However, it has admitted that it failed to implement effective controls to monitor whether fees withdrawn were actually fees in contravention of its obligation to provide financial services efficiently, honestly and fairly. Macquarie has agreed to pay the penalty.

ASIC issues ban on Centrepay payment arrangement in Urban Rampage stores

ASIC has [made](#) an order prohibiting Coral Coast Distributors (Cairns) Pty Ltd (**CCD**) from signing up its customers into Centrepay credit arrangements in its Urban Rampage stores. Centrepay enables consumers to repay credit through deductions from their Centrelink payments. The decision followed ASIC's findings that the arrangements were unsuitable for consumers in CCD's target market because they were inconsistent with the consumers' financial situation, placing them at risk of financial hardship. This decision marks ASIC's first final stop order under the design and distribution obligations regime.

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