# Today's Topics

➔ 1990 - First Annual Credit Law Conference
➔ 1993 – Code of Banking Practice
➔ 1994 – 1996 – State and Territory Credit Acts
➔ 1996 – UCCC
➔ 2009 – NCCP Act
➔ 2010 – Unfair Contract Terms
➔ 2014 – Credit Reporting
➔ 2017 – Banking Royal Commission
➔ 2018 – AFCA
➔ 2018 – Open Banking
➔ 2019 – Product Intervention Powers
➔ 2019 – Design and Distribution Obligations
➔ 2020 – Responsible Lending changes
➔ Key cases and penalties
➔ Predictions for the future

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# Wild west to Handmaid's tale…





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# 30 years of Credit and the Annual Credit Law Conference



Electronic Funds Transfer Code of Conduct (EFT Code)

1988

First Annual Credit Law Conference

1993

Consumer Credit (Queensland) Act 1994

1995

Consumer Credit (Western Australia) Act 1996
Consumer Credit (Tasmania) Act 1996

UCCC

1986

Privacy Act

1990

Code of Banking Practice

1994

Consumer Credit (NSW) Act 1995
Consumer Credit (VIC) Act 1995
Consumer Credit (ACT) Act 1995
Consumer Credit (South Australia) Act 1995
Consumer Credit (Northern Territory) Act 1995

1996

2000

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## NCCP ACT

### Australian Credit Licence (ACL)
→ Credit industry participants must have an ACL
→ Mandatory external dispute resolution
→ ACL obligations similar to AFSL
→ Exempt activities (eg point of sale retailers)
→ ACL holder "credit representative" – similar to AFSL "authorised representative"

### Responsible Lending
→ Applies to ACL holders (other than intermediaries) and their credit representatives
→ Make reasonable enquiries about borrower's requirements, objectives and financial situation
→ Assess whether credit contract is "unsuitable"
→ Document disclosure requirements

### National Credit Code (NCC)
→ Regulates credit provided for personal / household / domestic purposes or residential property investment
→ Consumer leases
→ Form and content of credit contracts and pre-contractual disclosure
→ Restrictions on enforcing rights under credit contracts and leases.
→ Related sale and insurance contracts

### Penalties
→ Extensive civil and criminal penalties for failure to comply with:
  • ACL obligations
  • responsible lending
  • NCC obligations
→ Extensive ASIC powers eg:
  • ACL conditions
  • Suspend or cancel ACL
  • Enforceable undertakings
  • Infringement notices
  • Ban on engaging in credit activities

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Code of Banking Practice revised

2004

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

2009

Unfair Contract Terms

2000

2003

Code of Banking Practice revised again

2006

National Consumer Credit Protection Act 2009

2010

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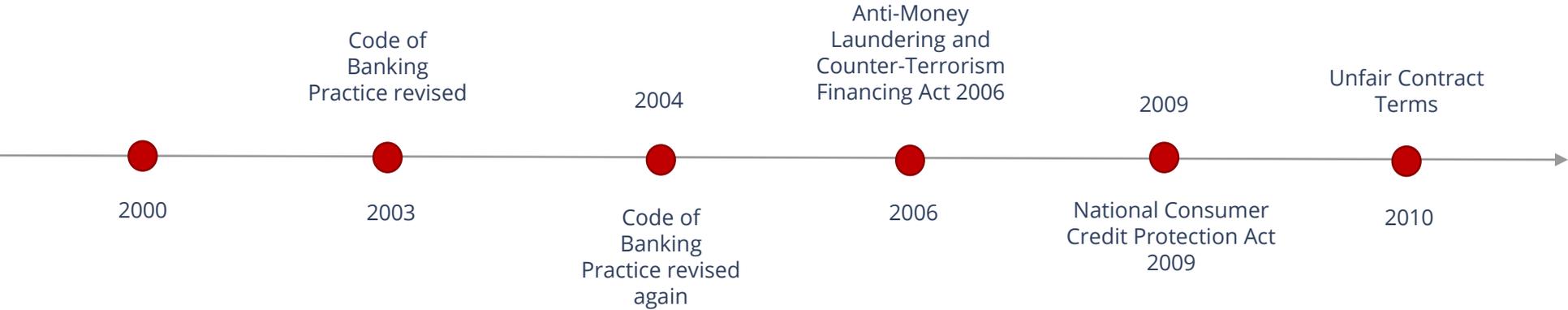
# 30 years of Credit and the Annual Credit Law Conference
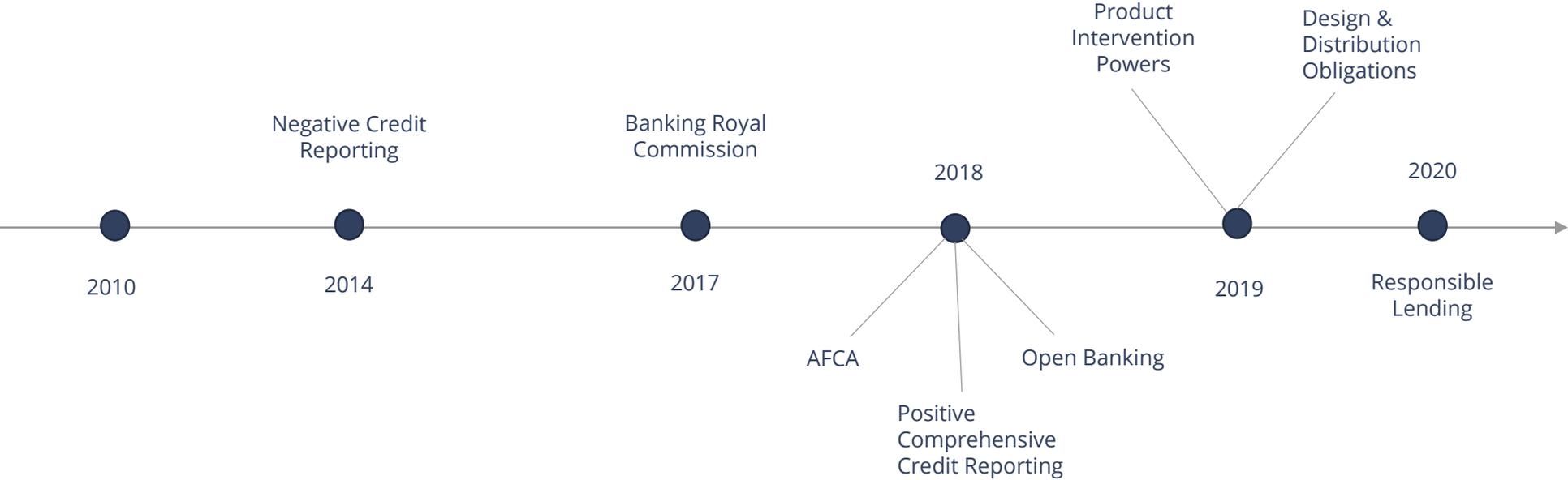
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## Responsible Lending

→ Contentious area in the credit law space

→ *ASIC v Westpac* case

→ Treasurer Josh Frydenberg announced overhaul of responsible lending laws

**ADIs will need to comply with APRA lending standard**

**Key elements of APRA's lending standards will be adapted to apply to non-ADIS, but these will be regulated by ASIC**

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## Rise of regulators

→ Regulators' powers have strengthened, armed with greater enforcement capabilities and bigger civil and criminal penalties

→ ASIC

**why not litigate?**      **PIO**      **Enforceable guidance**

→ AUSTRAC

**Biggest penalties in Australia**      **Importance of AML/CTF Program**

# 30 years of Credit and the Annual Credit Law Conference

| Key cases and penalties | | | |
|---|---|---|---|
| **Year** | **Financial Firm** | **Penalty** | **Regulatory body** |
| 2015 | The Cash Store, Assistive Finance Australia | $18.975 million | ASIC |
| 2016 | Nimble | $1.5 million and $50,000 contribution to Financial Counselling Australia | ASIC |
| | BMW Finance | $77 million | ASIC |
| 2018 | CBA | $700 million | AUSTRAC |
| 2019 | Westpac | $9.15 million | ASIC |
| 2020 | NAB | $57.7 million | ASIC |
| | NAB | $15 million | ASIC |
| | Westpac | $1.3 billion | AUSTRAC |

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# 30 years of Credit and the Annual Credit Law Conference

Predictions for the future – what is next?

2020

Responsible Lending
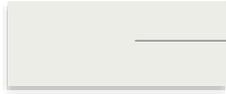
COVID-19 financial assistance mechanisms stop

RADI
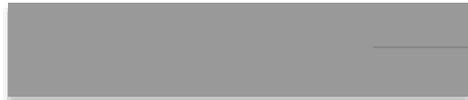
FinTech

Neobanking
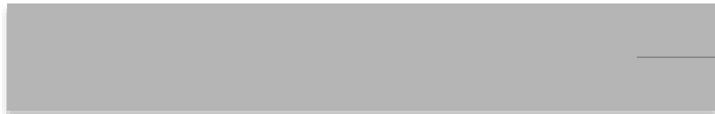
Blockchain and
digital currencies /payments

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# Questions?

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