Piper Alderman

"What's new in consumer credit legislation & regulation"

2019 ARCA Conference | 13-15 November

"What's new in consumer credit legislation and regulation" – 2019 Australian Retail Credit Association Conference Handout

Andrea Beatty, Partner, Piper Alderman

abeatty@piperalderman.com.au

Contents

Overview

This paper summarises key developments affecting credit over the past 12 months since the ARCA Conference held in November 2018.

The Banking Royal Commission which took place over the past year has been vital in bringing to light misconduct in the financial services industry. As a result, there has been much scrutiny and pressure placed on regulators, industry bodies and businesses to change in accordance with the findings of the Final Report.

However in the background, other significant industry changes have occurred such as the growth of buy-now-pay-later schemes, development of ASIC's capabilities evident in the Design and Distribution Obligations and Product Intervention Power, the formation of AFCA and the deciding of two major cases which clarified law regarding responsible lending and credit systems.

1. ASIC makes the most of new product intervention power

ASIC's new product intervention powers which came into effect on 5 April 2019 give ASIC the power to order persons to not engage in specified conduct in relation to a financial product or credit product if ASIC is satisfied that the product has resulted in, or will or is likely to result in significant detriment to retail clients or consumers (as the case may be).

Prior to making a product intervention order, ASIC will be required to consult persons who are reasonably likely to be affected by the proposed order and, if the order will apply to an APRA-regulated body, ASIC will also be required to consult APRA. The consultation requirement in relation to affected persons can be met by ASIC publishing the proposed order (or a description of the proposed order) on its website and inviting the public to comment on the proposed order.

A product intervention order can remain in force for a maximum period of 18 months, unless the Minister has given ASIC approval in writing to extend the operation of the order.

Acting contrary to or failing to comply with a product intervention order is both an offence and a civil penalty provision.

Short term credit

On 12 September 2019, ASIC registered ASIC Corporations (Product Intervention Order – Short Term Credit) Instrument 2019/917 (Short Term Credit PIO) using their product intervention power under Pt 7.9A of the *Corporations Act 2001* (**Corporations Act**) in relation to short term credit. This was ASIC's first use of the power since the legislation was enacted and is intended to address the significant consumer detriment arising from some short term lending models.[1]

ASIC has legislated the product intervention order as per s 1023D(3) of the *Corporations Act* to possess the ability to "intervene where financial and credit products have resulted in or are likely to result in significant consumer detriment".[2] This allows ASIC to directly interfere and respond to harms in the financial sector.

ASIC's industry-wide intervention utilises their legislative instrument to prohibit credit providers and associates from providing short term credit and charging for additional or collateral services. This does not extend to all consumer protections addressed under the *National Consumer Credit Protection Act 2009* (**NCCP Act**). Rather, it is directed at preventing charging fees beyond the permitted parameters under the short term credit exemption.

On 27 September 2019, Cigno Pty Ltd made an application in the Federal Court of Australia seeking to declare the Instrument invalid. The case is currently scheduled for a one day hearing on 30 March 2020.

Binary Options and CFDs

On 22 August 2019, ASIC published Consultation Paper 322: Product Intervention: OTC binary options and CFDs (CP 322), setting out its intention to make product intervention orders by legislative instrument under s 1023D(3) of the *Corporations Act*:

- prohibiting the issuing of binary options to retail clients; and
- imposing product design, disclosure and sales practice restrictions in respect of CFDs issued to retail clients.

Binary Options and CFDs have been made available to retail clients in Australia for around 20 years. ASIC has on numerous past occasions expressed its disapproval of the selling of OTC derivatives to retail clients on the basis that they are complex and high-risk financial products that retail clients may not understand.

The CFDs PIO would prohibit a CFD issuer from issuing a CFD to a retail client unless a number of prescribed conditions are met, including

- imposing leverage limits;
- implementing a standardised approach to automatic close-outs of client's CFD positions in margin call;
- protecting retail clients against the risk of negative CFD trading account balances;
- prohibiting certain trading instruments; and
- enhancing transparency of CFD pricing, execution, costs and risks.

[1] ASIC, 'Consultation Paper 316 – Using the product intervention power: Short term credit', consultation paper, 9 July 2019, https://download.asic.gov.au/media/5197542/cp316-published-9-july-2019.pdf [5].

[2] ASIC, '19-177MR ASIC consults on proposal to intervene to stop consumer harm in short term credit', media release, 9 July 2019, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-177mr-asic-consults-on-proposal-to-intervene-to-stop-consumer-harm-in-short-term-credit/.

Add-on financial products sold in caryards

On 1 October 2019, ASIC released Consultation Paper 324 *Product intervention: The sale of add-on financial products through caryard intermediaries* (CP 324) to seek consultation on three factors:

- introducing a deferred sales model for add-on insurance products and warranties by caryards;
- having additional deferred sales model obligations such as 'knock out' questions and prohibiting warranty sales that provide low levels of cover; and
- collecting data from insurers and warranty providers so that ASIC can monitor whether an intervention is operating as intended.

The product intervention power may only be used if ASIC reasonably believes that a product, or class of products, has or is likely to result in significant consumer detriment. CP 234 identifies the detriment of these products broadly as:

- redundant or duplicated insurance cover;
- policies under which the likelihood of an insured event occurring is remote (e.g. guaranteed asset protection insurance where the consumer paid a substantial deposit on purchase of the car);
- consumers being sold an excessive level of cover;
- lack of rebates when policy terminated early due to early payout of credit contracts;
- consumers being sold products under which they are ineligible to claim;
- lack of competition increases price of add-on insurance;
- overlap between insurance cover and statutory warranties;
- poor product design and low payout rates; and
- sales processes such as design fatigue and unfair sales practices.

The products to be affected by the next proposed use of the product intervention power include add-on motor vehicle insurance and warranty products. Add-on insurance products are defined to be:

- consumer credit insurance;
- guaranteed asset protection insurance (difference between amount owing on loan/lease and maximum amount that the vehicle is insured for);
- loan/lease termination insurance (difference between amount owing on termination of loan/lease and market value of vehicle);
- mechanical breakdown insurance;
- purchase price protection insurance (difference between amount that vehicle is insured for and purchase price of vehicle);
- tyre and rim insurance; and
- extended warranty products which are defined to be a contract under which either the dealer or a third party agrees to rectify, or arrange for another person to rectify defects with a vehicle but only if it issued to retail clients.

However, the products listed above are not affected if they are arranged or issued for no consideration, following a provision of personal advice to the client by a licensee or an exempt person or as a consequence of an extension to the term of a motor vehicle loan or lease.

The affected persons are those who issue affected products through an intermediary and intermediaries who arrange for retail clients to apply for or acquire affected products.

Conduct obligations

An affected person must not, in connection with the purchase/lease of a motor vehicle issue through an intermediary, or arrange for a retail client to apply for or acquire an affected product, unless the following conditions are met:

- the client has entered into a contract to purchase/lease a motor vehicle or applied for a motor vehicle loan/lease (to prevent pre-emptive sales before the consumer has even acquired a vehicle);
- an "online consumer roadmap" has been made available to the client and three calendar days have passed since the consumer was provided with the online consumer roadmap (the deferral period) (i.e. not before the fourth day after the consumer was provided with the online roadmap);
- the client expresses an intention to apply for or acquire the product through a facility in the online consumer roadmap before the end of the deferral period;
- the intermediary must not initiate contact with the client about an affected product during the deferral period;
- the intermediary has identified by class the persons who it reasonably believes would not

benefit from an affected product or option within that product, and the product/option is not made available in the online consumer roadmap to persons that the intermediary reasonably believes to fall within that class (i.e. there must be some information gathering by the intermediary to determine whether or not the client is within the class of people who would not benefit from the product);

- the intermediary has not engaged in unconscionable or manipulative sales conduct including, without limitation, representing to the client that if they do not acquire the product, they might be required to make payment from their own monies (or getting them to sign an acknowledgement to that effect); and
- for mechanical risk product (extended warranty product and mechanical breakdown insurance):
  - the cover provided by the affected product does not overlap with the manufacturer's warranty or any statutory warranty;
  - the maximum individual claim amount is not less than $2,000;
  - the product has a right of cancellation and pro rata refund for the client;
  - the product does not require the vehicle to be serviced by the seller/lessor or its associates; and
  - for new motor vehicles and used vehicles less than 10 years old, the product does not include a servicing requirement more onerous (including as to frequency) than that required by the manufacturer's warranty.

There are other obligations that must be met as well. These include maintaining a record of the date on which the online consumer roadmap was made available to the client and for an issuer of an extended warranty product, to provide data to ASIC on requested by them and to ensure that any outsourced warranty administrator does the same and to reasonably assist any outsourced warranty administrator to do the same.

An "online consumer roadmap" is in relation to an affected product defined as an online portal through which the client can apply for or acquire the product, decline to apply the product or request more information about the product. The draft legislative instruments prescribes specific disclosure requirements. ASIC is welcoming submissions in response to the consultation until 12 November 2019.

2. Open Banking moving forward

Open Banking is moving forward in anticipation of its February 2020 launch date with the passing of the Treasury Laws Amendment (Consumer Data Right) Bill 2019 and the trialling of the data share scheme. The ACCC's release of Consumer data right (CDR) Rules, draft accreditation guidelines and assurance strategy also signifies Australia's move towards a regulated Open Banking economy.

Trial Data Sharing

The ACCC are trialling data sharing as part as Australia's incoming open banking regime. Open Banking will allow data holders and accredited bodies to share customer data with the customer's consent in a machine-readable way. Prior to the launch, the ACCC invited data participants to test the CDR ecosystem. They received 40 expressions of interest but only 10 applicants were successful based on their intention and ability to meet the accreditation criteria prior to the launch of February 2020. These companies are:

- 86 400
- Frollo Australia
- Identitii
- Procure Build
- Quicka
- Regional Australia Bank
- Verifier Australia
- Wildcard Money
- Intuit Australia
- Moneytree

These fintech companies and start-ups will participate in the CDR ecosystem following successful progression through testing, demonstrating their ongoing capability to meet eligibility criteria and comply with the Rules.

Open Banking Rules

On 2 September 2019, ACCC released the Rules which outline the foundational rules necessary to implement CDR in banking. They also outline three key concepts vital to Open Banking being consent, authorisation and authentication:

- consent which refers to the consumer consenting to the data recipient collecting and using the consumer's data;

- authorisation which allows the consumer permitting the data holder to share data with the accredited data recipient; and
- authentication which is the process by which the data holder verifies the identity of the consumer directing the sharing of their data, and the identity of the accredited data recipient seeking to collect the consumer's data. Authentication occurs as part of the authorisation process.

Rule 1.4 outlines the three ways to request CDR data:

- product data requests can be made by any person who requests a data holder to disclose CDR data which relates to the products offered by the data holder;
- consumer data requests made by CDR consumers where an eligible CDR consumer may directly request a data holder to disclose CDR data which relates to them; and
- consumer data requests made on behalf of CDR consumers where an eligible CDR consumer may request an accredited person to request a data holder to disclose CDR data that relates to the consumer.

The Rules also cover disclosure, use, accuracy, storage, security and deletion of product data and CDR data for which there are CDR consumers. In addition, the Rules outline the process of accreditation of data recipients, report and record keeping requirements and incidental matters.

Draft Accreditation Guidelines

On 25 September 2019, the ACCC released their draft CDR accreditation guidelines to provide guidance to applicants who wish to lodge a valid application to become an accredited data recipient. The guidelines outline what an accredited person can do and the specifics of how they may receive data at the request and consent of a consumer. It also contains the rules which specify the ongoing obligations for accreditation.
Accreditation decisions are reviewable by the Administrative Appeals Tribunal, with the Rules outlining the appeals process.

Assurance Strategy

On 29 August 2019, the ACCC released the CDR assurance strategy to provide an outline of their high-level assurance and testing approach prior to Open Banking's launch in February 2020, to ensure that:

- each component is able to operate correctly, both individually and with other components;
- each participant has tested that their componentry works to specification and assurance that ACCC has provided;
- ACCC is able to validate other participants' readiness through a selection of different assurance processes; and
- ACCC defines and manages end-to-end test scenarios and supporting governance (defect, environments, data).

Open Banking will be a significant change for consumers, data holders and new players in the market. Affected businesses should consider the impacts of the new regime on their systems and processes and determine what changes should be made.

Piper Alderman's financial services team has developed a list of considerations for each type of business to transition to the new regime. Please get in contact with us if you would like more information.

3. The consumer mortgage experience: do lenders shape up?

On 29 August 2019, ASIC released Report 628: Looking for a mortgage: Consumer experiences and expectations in getting a home loan (REP 628).

The research undertaken by ASIC involved both qualitative research by following over 300 consumers in the process of taking out a home loan and quantitative research by surveying over 2,000 consumers who had recently taken out a home loan or were in the process of doing so.

ASIC found from the research that current remuneration practices create conflicts of interest that may contribute to poor consumer outcomes. There were seven findings from the research:

- consumers expected brokers to find them the 'best' loan;
- consumers were most likely to take out their loan with a lender they had an existing relationship with;
- consumers who used brokers were different to consumers who went direct to a lender;
- the way brokers presented loan options to consumers was inconsistent;

- consumers had a mixed understanding of how brokers are paid;
- the importance of finding a good rate seemed to decrease throughout the lending journey; and
- one in ten consumers surveyed said they were struggling to meet their repayments.

The report showed that consumers who took out loans directly through a lender were more likely to be a refinancer or have had previous experience taking out home loans. Furthermore, the consumers who went directly to a lender valued convenience and 69% of consumers took out their loans with a lender they had an existing relationship with.

This report highlights the issues raised in the Banking Royal Commission with respect to broker remuneration and a mortgage broker's best interests duty, in line with the Government's release of the exposure draft *National Consumer Credit Protection Amendment (Mortgage Brokers) Bill 2019*. The exposure draft Bill, which requires mortgage brokers to act in the best interests of consumers when providing credit assistance, imposes changes including:

- 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.

With the release of REP 628, ASIC Commissioner Sean Hughes commented that since home loans are important financial commitments, lenders, brokers and aggregators must make it easier for consumers to compare loan options and ensure brokers can communicate how a home loan option has been selected for them.

ASIC also announced that they are working alongside other regulators to develop a new home loan interest rate tool to increase transparency so that consumers can easily compare options. They expect this tool to be available on ASIC's MoneySmart website in 2020.

4. Restoring Trust in Australia's Financial System – Financial Services Royal Commission Implementation Roadmap

On 19 August 2019, the Australian Government released the Financial Services Royal Commission Implementation Roadmap. The Roadmap is aimed at clarifying how the recommendations made in the Banking Royal Commission will be actioned by the Government, regulators and the industry as a whole. It includes a detailed timeline and date targets on how the Government will implement the recommendations of the Final Report as well as regulator action and industry implementation. The Roadmap has been heralded as providing more certainty to consumers about when legislation will be implemented to address each of the 76 recommendations put forward by Commissioner Hayne.

The Government has, and is continuing to, work on their reform agenda and to date has enforced 15 commitments and has progressed publicly to implement another five.[3] They have also provided ASIC and APRA additional funding in the 2019 and 2020 Federal Budgets to assist in strengthening their enforcement and supervision activities.[4]

Furthermore, the Government has formed the Financial Services Reform Taskforce and the Implementation Steering Committee comprising of senior executives from the Treasury, ASIC and other agencies to ensure the reforms are effectively implemented.[5] Treasurer Josh Frydenberg said that more than 50 of the 54 recommendations that called for Government action will have been implemented or be subject to legislation by the middle of next year.[6]

Appendix A to the Roadmap outlines the suggested timeline for implementing recommendations and additional commitments which require Government action. To improve consumer protections the Government intends to introduce by the end of 2019:

- Recommendation 1.2 Mortgage broker best interests duty and Recommendation 1.3 Mortgage broker remuneration– the Government has released exposure draft legislation, the *National Consumer Credit Protection Amendments (Mortgage Brokers) Bill 2019*;
- Recommendation 4.11 Cooperation with AFCA – Amendments to NCCP Regulations and Corporations Regulations require licensed AFCA

[3] Australian Government, 'Restoring Trust in Australia's Financial System – Financial Services Royal Commission Implementation Roadmap' (Report, 20 August 2019) http://www.treasury.gov.au/sites/default/files/2019-08/399667_Implementation_Roadmap_final.pdf 2.
[4] Ibid 4.
[5] Ibid 5.
[6] Ryan and Macmillan, above n 1, https://www.abc.net.au/news/2019-08-18/banking-royal-commission-recommendations-implemented-by-2020/11425910.

members to take reasonable steps to cooperate with AFCA;

- Recommendation 7.1 AFCA remit to consider past disputes – the Government extended AFCA's remit to consider complaints back to 1 January 2008 until 20 February 2020;
- Recommendation 1.15 Enforceable industry code provisions – in March the Government consulted on potential legislation to implement enforceable code provisions; and
- Recommendation 1.7 Removal of point-of-sale exemption by 2020.

After three years, the Government will establish an independent review to evaluate the changes made in industry practices and the extent to which they have improved consumer outcomes and the need for continued reform.

5. Westpac Wins Responsible Lending Case Against ASIC

On 13 August 2019, Justice Perram of the Federal Court dismissed ASIC's case that alleged Westpac had breached section 128(c) of the *NCCP Act* by relying on the HEM value rather than a customer's declared living expenses when applying the 'serviceability calculation rule' element of its automated decision system.[7]

In summary, the main findings of the case are:

- the *NCCP Act* requires lenders to make reasonable inquiries about their customer's financial situation, which Westpac had done;
- the NCCP Act requires lenders not to provide loans that would result in a consumer being unable to comply with their financial obligations, or only being able to meet them with substantial hardship, and the assessment under s 129 must be directed towards that question;
- how a lender assesses unsuitability under s 129 is a matter for the lender's discretion, and s 129 does not impose and procedural or quality thresholds below which a purported assessment is not valid;
- ASIC offered no evidence that any Westpac customers either defaulted or suffered substantial hardship in avoiding default; and
- the adequacy of HEM was an irrelevant issue, as s 129 does not require a lender to use the consumer's actual or declared living expenses in assessing their capacity to meet obligations under the credit contract.

In 2018, ASIC and Westpac reached a settlement where the bank would pay a $35 million civil penalty for the alleged breaches of responsible lending laws. However, Perram J did not approve the agreed orders as the statement of agreed facts did not disclose any contravention of s 128 of the *NCCP Act*.

In dismissing ASIC's case against Westpac and ordering ASIC to pay Wesptac's costs, Perram J rejected ASIC's first allegation that Westpac breached the *NCCP Act* on 261,987 occurrences by not using the consumer's declared living expenses in assessing a home loan application as the allegation failed on both facts and statutory construction.

Furthermore, Perram J rejected ASIC's second allegation that Westpac breached the *NCCP Act* in calculating repayments on interest free loans based on the interest only period, as it is impossible to determine future repayments on a variable rate loan due to the potential for the interest rate to change over the term of the loan.

Living expenses

One of the most pertinent aspects of Perram J's judgment was in regards to assessment obligation under ss 128(c) and 129 of the *NCCP Act*. Perram J held that those sections require a credit provider to ask whether the consumer will not be able to comply with the financial obligations outlined in the contract or whether consumers could only comply with substantial hardship. They do not impose a quality or accuracy requirement on the assessment; merely considering and evaluating the s 131(2) criteria for unsuitability is sufficient.

A customer's declared living expenses were held not to be required to be taken into account in all cases, as the mere fact that they are characterised as living expenses did not make them relevant to the s 131(2)(a) criteria for unsuitability. Living expenses are only relevant if they cannot be reduced beyond a fixed minimum.

ASIC alleged that Westpac breached s 128(c) as it used the HEM benchmark instead of a consumer's declared living expenses. Perram J held that this argument failed on the facts. Whilst Westpac used the HEM value instead of a consumer's declared living expenses in the 'serviceability rule' element of its automated credit decision system, it used a consumer's declared living expenses in the '70% ratio rule' element of that system and so did in fact

[7] Australian Securities and Investments Commission v Westpac Banking Corporation (Liability Trial) [2019] FCA 1244 ('ASIC v Westpac').

use the consumer's declared living expenses in performing the s 129 assessment.

Interest only loans

ASIC also alleged that Westpac had not made the assessment required by ss 128(c) and 129 in respect of loans with an initial interest-only period because, in its serviceability calculation, it included a value for repayments calculated as if the principal had amortised from the commencement of the loan rather than the expiry of the interest-only period. Perram J rejected ASIC's argument on the basis that Westpac's only obligation under ss 128(c) and 129 was to assess the s 131(2) criteria for unsuitability.

Perram J argued that this part of the regulator's case could be "readily dispatched" as the interest is variable and it is not possible to ascertain what the repayments will be at the end of the interest-only period.

ASIC argued that Westpac had failed to take into account the consumer's financial situation as the repayments the consumer would actually be required to make after the expiry of interest-only period were not the ones Westpac had used in its assessment. Perram J found this argument to be "self-defeating" because, if Westpac had used the payments expected to be payable following expiry of the interest-only period, it would be arguable that Westpac failed to take into account the consumer's financial situation at the commencement of the loan and during the interest-only period. There is no implied conservatism requirement in the s 129 assessment obligation.

Evidently, this decision will have lasting ramifications on how lenders assess loan applications, unless the *NCCP Act* is amended. ASIC has explained that this was a 'test case' which tested the ambit of responsible lending laws.[8] After their careful consideration of the judgment, whether the corporate regulator will appeal the decision, or whether they will push for an amendment of responsible lending laws will be interesting to observe.

Notably, however, ASIC did not plead that any of the 261,987 loans in question were unsuitable in contravention of section 133(1) of the *NCCP Act*. The essence of its case was that the assessment process was defective and therefore any purported assessment invalid, even though it did not result in an unsuitable credit contract being entered into. Absent any law reform, ASIC will likely need to pursue a similar case by identifying unsuitable credit contracts entered into and seeking penalties for contravention of section 133(1).

ASIC has since filed an appeal with the Full Federal Court of Australia against the decision on two grounds:

1. the primary judge erred by incorrect assessment under section 129; and
2. the primary judge erred by making an assessment of unsuitability within the meaning of 'financial obligations' in section 131(2)(a).

6. ASIC V Kobelt [2019] HCA 18 – Supplying "Book-Up" Credit To An Indigenous Community

ASIC has had a further significant loss – the High Court dismissed ASIC's appeal and determined that a "book up" credit service was not unconscionable.

Background

In Mintabie, South Australia, Mr Lindsay Kobelt operated "Nobby's Mintabie General Store" (**Nobby's Store**) where most of his customers were Indigenous Australians in remote communities. Mr Kobelt operated Nobby's store by utilising a book-up credit system which allowed customers to purchase food and second-hand cars on credit supplied by Mr Kobelt.[9] The book-up credit system operates by Mr Kobelt being authorised to access his customer's wages or Centrelink payments and PIN for their bank cards. Hence, this case concerned whether the supply of credit to the residents of the APY Lands under the book-up system contravened the proscription of unconscionable conduct fixed by s 12CB(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

First instance

At first instance, ASIC alleged that Mr Kobelt was providing credit without an Australian Credit Licence (**ACL**) and was acting unconscionably in providing the credit. White J, the primary judge found that Mr Kobelt required an ACL to provide credit to purchasers of second-hand motor vehicles from 1 July 2011 until at least April 2014. Hence, Mr Kobelt's supply of credit under the book-up system had contravened s 12CB of the *ASIC Act* and

[8] ASIC, '19-210MR ASIC's responsible lending case dismissed by Federal Court' (Media release, 13 August 2019) https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-210mr-asic-s-responsible-lending-case-dismissed-by-federal-court/.

[9] Australian Securities and Investments Commission v Kobelt [2019] HCA 18 ('ASIC v Kobelt').

therefore was, unconscionable.[10] White J also found that Mr Kobelt did not need to take the full amount out of his customers accounts and was doing so for his own benefit. Therefore, unnecessarily tying customers to their dependence on Nobby's Store when they could have been shopping elsewhere. As a result, Mr Kobelt was ordered to pay a pecuniary penalty of $167,500.

The Full Court

On appeal, the Full Court of the Federal Court found that the supply of book-up credit was not unconscionable as the customers had a basic understanding of the system and voluntarily entered into it with Mr Kobelt.[11] It was found that the customers knew that they could frustrate the agreement by either cancelling their bank card or directing future payments to be credited to a different bank account. They also found that Mr Kobelt did not act with dishonesty but rather with a degree of good faith as he did not exert undue influence on his Indigenous customers to enter into his book-up system. Wigney J found that Mr Kobelt was fulfilling a demand rather than acting in an unconscionable manner. Furthermore, it was held that there was an absence of unconscientious advantage and hence, he did not contravene s 12CB(1) of the *ASIC Act* and the appeal was upheld.

The High Court

On ASIC's appeal, the High Court, a 4:3 majority dismissed the appeal and found Mr Kobelt was not guilty of unconscionable conduct. The majority found that the book-up system was not exploiting the customers but rather it was a system akin to Mr Kobelt's Indigenous customers. Keane J identified that 'unconscionable' as identified in s 12CB of the *ASIC Act* relates to a level of exploitation and "victimisation of the vulnerable". Furthermore, Keane J regarded it to be "calculated taking advantage of a weakness or vulnerability on the part of victims of the conduct in order to obtain for the stronger party a benefit not otherwise obtainable". Mr Kobelt did not satisfy either category of 'unconscionable' as he did not take advantage of the book-up credit system.

Evidently, this seminal case identifies that a book-up credit system is not *prima facie* unconscionable, but can be considered as a required and desired system of credit. However, the narrow majority that came to this decision is demonstrative of the divided approach to and opinion of statutory unconscionability in the current legal landscape and poses a question as to how it may be interpreted in future cases.

[10] Australian Securities and Investments Commission v Kobelt [2017] FCA 387.

[11] Kobelt v Australian Securities and Investments Commission [2018] FCAFC 18 (15 February 2018).

7. ASIC finds CCI has 'Consistently Failed Consumers'

ASIC's review of the sale of consumer credit insurance (**CCI**) by 11 major banks and other lenders has found that the design and sale of CCI has consistently failed consumers.

ASIC's Report 622 *Consumer credit insurance: Poor value products and harmful sales practices* (**REP 622**) released on 11 July 2019 highlights the very low value of CCI products and the unfair way they are promoted and sold to consumers. The report forms part of ASIC's broader priority to address fairness to consumers, especially harms in insurance.

ASIC's review found that:

- CCI is extremely poor value for money. For every CCI sold with a credit card, consumers only received 11 cents in claims for every dollar paid in premiums. Only 19 cents was recovered in claims for every premium dollar which consumers paid for CCI products sold by lenders;
- consumers were being incorrectly charged for CCI including ongoing CCI premiums when they no longer had a loan;
- many lenders did not have consumer-focused processes to help consumers in hardship make a hardship claim under their CCI policy; and
- CCI sales practices were causing consumers harm, as:
  - consumers were sold CCI despite being ineligible to claim under their policy;
  - telephone sales staff used high-pressure selling and other unfair sales practices when selling CCI; and
  - consumers were given non-compliant personal advice to purchase unsuitable policies.12

ASIC reviewed the sale of CCI by lenders for the period 2011 to 2018 and found that CCI sales practices and product design are still delivering

[12] ASIC, '19-180MR ASIC finds unacceptable sales practices, poor product design and significant remediation costs in CCI sold by major banks and lenders' (Media release, 11 July 2019) https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-180mr-asic-finds-unacceptable-sales-practices-poor-product-design-and-significant-remediation-costs-in-cci-sold-by-major-banks-and-lenders/.

poor outcomes for consumers. This latest report regarding CCI products comes after their 2011 Report 256 *Consumer credit insurance: A review of sales practices by authorised deposit-taking institutions* (**REP 256**) on the same issue. At the time, ASIC made 10 recommendations to raise industry standards and reduce the risk that CCI may be mis-sold to consumers.[13]

In 2015 and 2016, ASIC also reviewed the sale of add-on insurance (including CCI) through car dealerships.[14] ASIC found that consumers were being sold "expensive, poor value products that provided very little or no benefit" in a sales environment that was high pressure with high commissions and conflicting interests.[15]

In August 2017, ASIC formed a CCI working group to respond to such concerns and improve outcomes for consumers. Due to this, effective 1 July 2019, the Banking Code of Practice has a four-day deferred sales period for CCI sold with credit cards and personal loans in branch or over the phone.

In preparing REP 622, ASIC in December 2017 required 11 lenders to undertake an independent review of their CCI sales practices for the five-year period from January 2013 to December 2017.[16] These lenders included the four major banks and other significant lenders and insurance companies.

Furthermore, in REP 622 it was found that CCI was being sold to ineligible consumers and consumers who did not need cover or were unlikely to benefit.[17] Eligibility criteria in CCI policies that some consumers did not meet included employment status and excluded some pre-existing conditions.

ASIC found that CCI is unsuitable for certain categories of consumers including:

- single consumers under the age of 25, with no dependants and minimal assets being sold during the life component of CCI;
- those who already have life, total and permanent disability or income protection cover through their superannuation fund that covers the same risks;
- those in financial hardship due to a change in personal circumstances who obtain a loan to consolidate their debts, where the change in personal circumstances means the consumer no longer meets the key eligibility criteria;
- those who do not meet the key eligibility criteria for some or all types of cover when they are sold the product; and
- consumer who do not meet a lender's own target market criteria for the product, including income thresholds.

Therefore, ASIC found that lenders were employing unfair sales practices such as employing third-party telemarketers and motivating them to increase their sales by providing volume bonuses and sales targets. Hence, these telemarketers engaged in unfair sales tactics such as falsely representing CCI products, pressuring and persisting with sales calls despite consumers stating they did not need or want CCI and overcoming their reasonable objections and concerns.[18]

As a result of the review and misconduct found, REP 622 outlines ASIC's commencement of enforcement investigations into entities that have been involved in mis-selling CCI to consumers. ASIC will undertake a large-scale remediation program to address consumer harm which includes remediating over 300,000 affected consumers over $100 million. ASIC is involved in the process to ensure that remediation programs follow certain principles, including following ASIC's regulatory guidance on remediation. [19]

8. ASIC Ensures Licensees Meet their AFCA Membership Obligations

On 1 November 2018, Australian Financial Complaints Authority (AFCA) was formed and replaced the Financial Ombudsman Service, Credit and Investments Ombudsman and Superannuation Complaints Tribunal. All financial services licensees and credit licencees were required to obtain an AFCA membership as part of their general conduct obligations.

In its first 12 months of operations, AFCA received 73,272 complaints from consumers, with $185 million in compensation awarded. The number of a complaints is aa 40% increase compared to the number of complaints received from its predecessors last year, likely due to the Banking Royal Commission and increased public awareness of the service.

On 12 July 2019, AFCA advised ASIC that 58 financial services licensees and 217 credit licensees had not obtained an AFCA membership. Although these

[13] REP 622, 5.
[14] REP 622, 5.
[15] REP 622, 5.
[16] REP 622, 6.
[17] REP 622, 13.
[18] REP 622, 14.
[19] Regulatory Guide 256 *Client review and remediation conducted by advice licensees* (RG 256).

licensees previously held external dispute memberships with previous schemes, as they had not obtained an AFCA one they may be found in breach of their licence conduct obligations. As a result of ASIC's intervention they found these potentially non-compliant financial and credit licensees:

- 50 financial services licensees subsequently obtained AFCA membership;
- 4 financial services licensees voluntarily cancelled their licenses;
- 4 financial services licensees were cancelled or suspended by ASIC;
- 131 credit licensees subsequently obtained AFCA membership;
- 38 credit licensees voluntarily cancelled their licenses; and
- 48 credit licensees were cancelled or suspended by ASIC.[20]

ASIC's intervention into this issue means consumers will be protected from financial service licensees and credit licensees who did not abide by their license obligations. Furthermore, consumers will be secured knowing they have access to an independent dispute resolution scheme of AFCA where their complaints will be properly considered. If entities fail to comply, ASIC will take formal action to cancel or suspend their licenses.[21]

9. ASIC Consults on New IDR Processes

ASIC has requested public consultation on new standards for financial firms to handle consumer and small business complaints. The new standards will improve how complaints are handled and make a financial firms' complaints handling performance transparent.

Consultation Paper 311 Internal dispute resolution: update to RG 165 details proposed updates to IDR standards in Regulatory Guide 165 Licensing: Internal and external dispute resolution, as well as proposed framework for mandatory IDR data reporting by financial firms to ASIC.

[20] ASIC, '19-182MR ASIC ensures licensees meet their AFCA membership obligations', media release, 12 July 2019, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-182mr-asic-ensures-licensees-meet-their-afca-membership-obligations/.
[21] Ibid.

RG 165 Update

A number of amendments to RG 165 have been proposed, with ASIC releasing a new draft guide and data dictionary. Changes to the Regulatory Guide include:

- expansion of the IDR requirements to cover superannuation trustees;[22]
- a new definition of 'complaint' based on AS/NZS 10002:2014, being 'an expression of dissatisfaction made to or about an organisation related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required'.23 This expands the concept of a complaint to include expressions of dissatisfaction made 'to or about' an organisation, which ASIC believes will capture complaints on social media platforms;[24]
- reducing maximum timeframes for IDR responses to require a resolution no later than 30 days after receiving the complaint, unless a different timeframe applies (e.g. certain credit related complaints require a 21 day response);[25]
- strengthening the requirement that firms take a systemic focus to complaints handling, requiring boards and financial firm owners to set thresholds for and processes around identifying systemic issues that arise from consumer complaints;[26]
- modifying the definition of 'small business' under the *Corporations Act* to align with the AFCA definition;[27]
- new requirements surrounding complaints received, including the requirement to record all complaints received, even those resolved immediately;[28] and
- requirement to record prescribed data for each complaint received;[29]

[22] ASIC, 'Draft Regulatory Guide 165: Internal Dispute Resolution' (**Draft RG 165**) (May 2019) https://download.asic.gov.au/media/5113680/attachment-1-to-cp311-published-15-may-2019-draft-updated-rg-165.pdf [165.1].
[23] Ibid [165.28 – 165.37].
[24] ASIC, 'Consultation Paper 311 Internal dispute resolution: Update to RG 165' (**CP 311**) (May 2019) https://download.asic.gov.au/media/5113692/cp311-published-15-may-2019.pdf [29].
[25] Draft RG 165, above n 1, [165.81].
[26] Ibid [165.129].
[27] CP 311, above n 3, [43].
[28] Draft RG 165, above n 1, [165.57].
[29] Ibid [165.62].

IDR Data Reporting

ASIC intends to issue a legislative instrument detailing its IDR data reporting requirements. Under the new framework, all financial firms that are required to report IDR data to ASIC must:

- for each complaint received, report against a set of prescribed data variables, including a unique identifier and a summary of the complaint;
- provide IDR data reports to ASIC as unit record data;
- report to ASIC every 6 months following each reporting period; and
- lodge IDR data reports through the ASIC Portal.[30]

ASIC's Prior Research

The proposed standards stem from recent ASIC research into IDR policies, practices and procedures in Australia's five largest and most complex financial services institutions. The research, published in December 2018, found evidence of 'consumer fatigue' and IDR shortcomings, including:

- although 17% of people surveyed considered making a complaint in the previous 12 months, only 8% followed through;
- 18% of those who made a complaint dropped out or withdraw their complaint before it was concluded;
- the length of time taken to resolve the complaint significantly affected consumer satisfaction;
- one in seven complaints found it difficult to locate the financial firms' contact details;
- almost a quarter of complainants did not have the IDR process explained well at first contact and 27% were unsure how long a decision would take; and
- only 45% of complainants who received an unfavourable outcome received an explanation why the decision was made against them.[31]

ASIC plans to release new standards by December 2019. A separate consultation on the publication of IDR data will commence in early 2020.

10. ASIC Updates Crypto-Asset Guidance

On Thursday 30 May 2019, ASIC updated its guidance on initial coin offerings (ICOs) and crypto-assets. Since being last updated in May 2018, INFO225 has become more comprehensive and now specifically refers to more business models, with a number of new examples included in order to provide readers with a better idea of how ASIC will likely treat their use of crypto-assets.

Despite these updates, INFO225 might be said to represent one small step, with a giant leap yet to be made in regulatory treatment to embrace blockchain concepts such as smart contracts and crypto-currencies in Australia (and likely a leap that only Parliament or Treasury can take). The equivalent guidance released by the UK, Singapore and Switzerland provides clearer categorisation of tokens and paths forward for the issue of cryptographic tokens in those jurisdictions, a point not missed by ASIC in this guidance.

INFO225 has been renamed to include a consideration of crypto-assets, rather than only crypto-currency, indicating a broadening of the intended guidance and acknowledging the changing nature of the crypto-asset market away from ICO offerings of cryptcurrencies and towards tokenized funds and Security Token Offerings (STOs)

Regulatory signposts

ASIC identifies at the start of INFO225 stakeholder groups and ASIC Regulatory Guides which cover the potential obligations of those stakeholders. These groups include:

- Issuers of crypto-assets;
- Crypto-asset intermediaries;
- Miners and transaction processors;
- Crypto-asset exchange and trading platforms;
- Crypto-asset payment and merchant service providers; and
- Wallet providers and custody service providers.

When could an ICO be or involve a financial product?

Reiterating that Australian laws will apply to all token issues, regardless of what the label is of the offering called, INFO225 expands on the earlier guidance to provide further details of when ASIC will consider the characteristics of the ICO or token to indicate that the offer is of an interest in a managed investment scheme, a security, a derivative or a non-cash payment facility.

In doing so ASIC has provided some examples of laws or regulations applicable to each financial product.

[30] CP 311, above n 3, [B6].
[31] Ibid [8].

In keeping with ASIC's position that there is a high risk of most ICOs or token generation events being characterised as a managed investment scheme (MIS), INFO225 has now updated the previous guidance concerning MIS's significantly. As well as adding a graphic which directs readers to more contemplate whether their offering is likely to be considered an MIS by ASIC, this section has included a noteworthy amount of detail regarding the requirements of retail and wholesale MIS offerings. The guidance explicitly provides that relying on an appointment as a corporate authorised representative of another Australian Financial Services License (AFSL) holder will not alone be sufficient to issue interests in an ICO or crypto-asset which has been characterised as an MIS.

ASIC has also indicated in Part A of the guidance that it expects entities to:

- be able to justify a conclusion that their token or ICO is not a financial product; and
- know who their investors are if the entity intends to rely on wholesale/sophisticated investor exemptions.

The guidance is at pains to note the discussion of what Australian laws might apply to a particular token is not exhaustive, and the responsibility lies with entities to ensure their own compliance with laws.

As an interesting aside, ASIC also removed that part of the previous guidance sentence which stated that:

"(for example, ASIC has stated that it does not consider bitcoin to be a financial product)".

Financial markets and licensing

The guidance for crypto-asset trading platforms (that is crypto exchanges) only includes minor changes, there are two interesting takeaways from this Part:

- ASIC has strengthened its language to clarify that to operate in Australia, exchanges which list (or issue) tokens that can be characterised as financial products will need to hold an Australian market licence unless covered by an exemption – as opposed to the previous wording, which indicated that those exchanges may need to hold Australian market licence; and
- ASIC states that currently there are no licensed or exempt exchanges in Australia that enable consumers to buy (or be issued) or sell crypto-assets which are financial products.

How do overseas categorisations of crypto-assets translate to the Australian context?

Now that the Financial Conduct Authority (FCA) in the United Kingdom, the Securities and Exchange Commission (SEC) in the United States, the Monetary Authority of Singapore (MAS) and the Swiss Financial Market Supervisory Authority (FINMA) (among others) have provided very comprehensive approaches to establishing categories and defining token sales, ASIC has included a new Part F in INFO225 stating that overseas token categorisations do not automatically translate to equivalent products in Australia.

More specifically, INFO225 reminds readers that the Australian definition of a financial product is broader than in other jurisdictions, and it is necessary to be prudent in determining whether a crypto-asset may fall in a domestic regulatory perimeter in Australia, despite it not doing so overseas. This may be a subtle reference to the clearer guidance present in other jurisdictions which may lure potential issuers into a false sense of security in copying what has been done offshore.

11. OAIC Releases its 12-Month Notifiable Data Breaches Report

On 13 May 2019, the Office of the Australian Information Commissioner (**OAIC**) released its 12-month notifiable data breaches report for the period 1 April 2018 to 31 March 2019.

During the period, of the 1,132 notifications made to the OIAC, a total of 964 eligible data breaches were reported.[32] This was a 712% increase in notifications since the scheme was made mandatory in February 2018.[33] Of the breaches reported, 86% involved the disclosure of contact information.[34]

60% of reported data breaches were as a result of malicious or criminal attacks, with phishing and spear phishing the most common and effective measure of attack.[35]

35% of attacks were attributed to human error, such as through unintended disclosure of personal information or the loss of a data storage device. However, this number rose to 55% for health sector

[32] Office of the Australian Information Commissioner, 'Notifiable Data Breaches Scheme 12-month Insights Report' (13 May 2019) https://www.oaic.gov.au/resources/privacy-law/privacy-act/notifiable-data-breaches-scheme/quarterly-statistics/ndb-scheme-12%E2%80%91month-insights-report.pdf.
[33] Ibid.
[34] Ibid.
[35] Ibid.

data breaches and 41% for finance sector data breaches.[36]

83% of the reported breaches affected less than 1,000 people. 3 of the breaches affected over one million people however, 232 breached had only affected one individual. As has been seen in previous data breach cases, a data breach does not need to affect hundreds of people to be a serious breach. In August 2019, Ryde Hospital staff mistakenly handed the medical records of a sexual assault victim to another patient, which contained personal contact details and private medical information regarding the sexual assault. In 2011, medical company MetVet revealed the names, home and work addresses of 692 MedVet customers who had ordered paternity, drug and alcohol test kits were made available on the internet.

The OAIC notes that consumers benefit most from timely notifications in plain English that explain the key risks and how they can mitigate them.

12. ASIC Review of 'Buy Now Pay Later' Industry

On 28 November, ASIC released its much anticipated report into the 'buy now pay later' industry (**industry**), Report 600: Review of buy now pay later arrangements (**Report**). The industry is relatively unregulated, as companies are exempt from the *NCCP Act* either because they offer continuing credit contracts that are exempt from *NCCP Act* regulation under s 6(5) of the Act, or they do not charge the consumer for providing the credit.[37] The Report, which provides an overview of the industry and its customers, states that ASIC will take regulatory action to address misconduct and will monitor the industry and risks to consumers.

The eight key findings of the Report are as follows:

- The industry is rapidly growing, with the customer base increasing from 400,000 in the 2016 Financial Year to 2 million, and the number of transactions per month growing from over 50,000 in April 2016 to 1.9 million in June 2018.[38] The total balance of outstanding debt from these arrangements grew from $476 million in April 2016 to $903 million by June 2018.[39] Total revenue has also increased from $32 million in the April to June 2016 quarter, to $78 million during the April to June 2016 quarter.[40]
- The industry is diverse and evolving, with a variety of providers offering different arrangements. Consumers are able to choose from providers with different credit limits, late fees, repayment terms and account fees.
- Some arrangements result in the price of goods being inflated, especially for high value purchases, goods with less transparent and 'negotiable' prices, and services.[41] ASIC found that this inflation may be misleading if not disclosed, as retailers are obscuring the actual cost of using the arrangement.[42] ASIC is currently reviewing the legal position of price inflation, and have taken action against providers for attempting to avoid the NCC by establishing artificial business models.[43]
- Many users are relatively young, with 60% of users between the ages of 18 and 34.[44] Two in five users earn under $40,000 per annum, with 40% of these being students or part-time workers.[45]
- These arrangements have influenced the spending habits of some consumers, with 86% of consumers planning to use the arrangement again[46] and over 50% stating they are spending more.[47]
- Over-commitment can be a risk for some consumers, with one in six users having overdrawn, delayed other bill payments or borrowed additional money.[48] Interestingly, less than 10% of customers of five providers were charged late fees more than once on the same transaction in each quarter, compared with 19% of credit card holders with problematic debt.[49]
- Providers take some steps to act fairly, but can do more. Two providers have voluntarily become members of the Australian Financial Complaints Authority (AFCA)[50] and engage in measures to help consumers make informed decisions about purchases and repayments.[51] ASIC considers providers should ensure

[36] Ibid.
[37] ASIC, *Report 600: Review of buy now pay later arrangements* (November 2018) https://download.asic.gov.au/media/4947835/rep600-published-28-11-2018.pdf 8.
[38] Ibid [25].
[39] Ibid [25].
[40] Ibid [27].
[41] Ibid [36].
[42] Ibid [37].
[43] Ibid [38].
[44] Ibid [39].
[45] Ibid [40].
[46] Ibid [42].
[47] Ibid [44].
[48] Ibid [49].
[49] Ibid [50].
[50] Ibid [63].
[51] Ibid [57].

consumers adequately understand the arrangement and make complaints and financial hardship services visible.[52]

- Providers include potentially unfair terms in their contracts, including:
  - giving the provider a very broad unilateral discretion to vary the contract
  - providing a very broad range of circumstances where the customer will be regarded as in 'default'
  - limiting and excluding the liability of provider for goods and services supplied by the merchant
  - holding the consumer liable for unauthorised transactions, even when the providers is aware of or suspects the transaction may be unauthorised, and
  - very broadly indemnified the provider against losses, costs, liabilities and expenses.53

In Report 600 ASIC did not identify that they were planning to amend the National Credit Legislation to capture buy now pay later schemes. However, ASIC specifically stated in the report that the product intervention power should be extended to all credit facilities, identifying that they would be willing to use the product intervention power on the buy now pay later industry if they believe it is causing significant detriment to consumers that cannot be resolved through voluntary action.

In the recent Senate Inquiry, recommendations 9 and 10 were aimed at the buy now pay later industry. The Committee suggested that the government consider, in consultation with ASIC what regulatory framework would be most appropriate for the industry. It was recommended that the regulation ensure that:

- before credit is extended, providers appropriately consider consumers' personal financial situations;
- consumers have access to internal and external dispute resolution mechanisms;
- providers offer hardship provisions;
- products are affordable and offer value for money; and
- consumers are properly informed, prior to entering into agreements, about their terms and conditions.

The Committee also recommended the development of an industry code of practice for the buy now pay later industry.

13. ASIC Provides Response to Royal Commission Final Report

ASIC is committed to accepting and implementing all 12 recommendations directed towards them in the Banking Royal Commission which do not require legislative changes. ASIC will also supervise implementation of 23 recommendations to impose new requirements or restrictions on the entities they regulate.

Whilst ASIC would not comment on any actual or potential investigations, they have announced that they will provide an update on the handling of the 11 specific case referrals from the Royal Commission. ASIC's enforcement teams have also begun investigations into the 12 case studies which were heard at the Royal Commission and have commenced proceedings in relation to two other cases. ASIC is also looking into a further 16 cases to determine whether investigations are needed. It is expected that this will result in a number of referrals to the Commonwealth Director of Public Prosecutions for criminal prosecutions. They are also responding to 76 recommendations made in the Banking Commission's Final Report.

ASIC has commented on the need to change their culture to adopt a 'why not litigate?' stance which they publicly committed to in October 2018. Following the recommendations, ASIC is determined to establish a separate Office of Enforcement. A taskforce for its implementation has been put in place and completion is estimated for 2019.

ASIC has accepted that closer coordination with APRA will be needed in order to strengthen the 'twin peaks' model. They welcome the call for greater regulatory accountability via the establishment of a new oversight body and plan to be proactive in collaborating with them. The findings and observations in the Royal Commission's final report will be the basis of ASIC's agenda moving forward. A large number of the recommendations made by the Royal Commission involved reforms ASIC has previously advocated for. These changes will build on the existing reform agenda and changes introduced by the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act* 2018. Further, ASIC is ready and willing to work with the Government, Parliament and APRA

[52] Ibid [61].
[53] Ibid [65].

in order to strive for a fair, strong and efficient financial system for all Australians.

14. Design and Distribution Obligations and Product Intervention Power Legislated

The *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (**Act**) came into force on 5 April 2019. It introduces two long-awaited consumer protection measures into the *Corporations Act* and *NCCP Act*, including design and distribution obligations for offerors of financial products to retail clients.

The design and distribution obligations are contained in a new Part 7.8A inserted into the *Corporations Act*. They require offerors (issuers and certain sellers) of financial products intended for retail clients to consider the intended clients of their products, design products to be appropriate for their intended clients and to take steps to ensure that products are not offered to persons outside their target market. They apply to financial products that must be offered under a Part 6.2D disclosure document or a Product Disclosure Statement, or which are issued to retail clients. As passed, the definition of 'financial product' has been expanded to include financial products within the meaning of the ASIC Act, including credit facilities.

The objective of the design and distribution obligations is to 'assist consumers to obtain appropriate financial products by requiring issuers and distributors to have a customer-centric approach to designing, marketing and distributing financial products'.

The key obligations on regulated persons are:

- for financial product offerors, to prepare a 'target market determination' in relation to a product, identifying the class of persons at whom the product is directed, limitations on its distribution and conditions for reviewing the target market determination (s 994B);
- to not engage in any retail product distribution activity unless and until a target market determination has been made (s 994D);
- to take reasonable steps to ensure that a financial product is distributed consistently with its target market determination (s 994E); and
- to notify ASIC upon giving aware significant dealings in a financial product that are inconsistent with the target market determination (s 994G).

A target market determination for a financial product must be such that if the product were to be issued or sold to a retail client in accordance with the target market determination, the retail client is within the target market and the product would be appropriate for a retail client in the target market – that is, it is consistent with the likely objectives, financial situation and needs of the client (s 994B(8)). Whilst this obligation is phrased as if an offeror identifies a target market given particular product specifications, in practice offerors will need to identify their target retail clients at the outset and then design the financial product to be appropriate to those clients.

If ASIC is satisfied that a design and distribution obligation has been contravened, it may order a regulated person to not engage in specified conduct in relation to retail clients. However, prior to this, ASIC must hold a hearing and allow any interested person to make submissions (unless any delay in making the order would be prejudicial to the public interest, in which case ASIC may make a 21 day interim order).

On 12 September 2019, the Government released the draft Corporations Amendment (Design and Distribution Obligations) Regulations 2019 and an explanatory statement for public consultation. The regulations are intended to support the Act by varying the range of products and entities that are subject to the design and distribution obligations.

The proposed regulations intend to extend the DDO to additional persons and products and also expressly exclude certain products from the DDO. These excluded persons include:

- 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; and
- the provision of a mortgage.

15. Government Announces Increased Penalties for Privacy Act Breaches

On 24 March 2019, the Commonwealth Attorney-General and the Minister for Communications and the Arts announced the Federal Government's intention to legislate to strengthen penalties under the *Privacy Act 1988* (**Privacy Act**) and other reforms to target major social media companies' conduct in relation to personal information.

The announced reforms are:

- increasing the maximum penalty for serious or repeated interferences with an individual's privacy to the greater of $10 million, three times the value of the benefit derived from the misuse of information or 10% of a company's annual domestic turnover;
- empowering the Privacy Commissioner to issue infringement notices, and new penalties of up to $12,600 for individuals and $63,000 for bodies corporate for failure to cooperate with efforts to resolve minor breaches;
- to provide other (unspecified) options to the OAIC to ensure that breaches are addressed through third-party reviews;
- to enable individuals to be able to request that social media and online platforms stop using or disclosing their personal information, and to require social media and online platforms to comply with such requests; and
- to introduce specific (but unspecified) rules to protect the personal information of children and other vulnerable persons.

Draft legislation is expected to be released for consultation by the end of 2019.

16. Fair Work Commission's Surprising Interpretation of the Australian Privacy Principles

The recent Fair Work Commission (**FWC**) decision of *Jeremy Lee v Superior Wood Pty Ltd* [2019] FWCFB 2946 has provided interesting insight on the extent to which an employee can request your personal data.

Background

Jeremy Lee was employed at Superior Wood for approximately 3 ¼ years, before he was dismissed on 12 February 2019 for failing to comply with Superior Wood's Site Attendance Policy. The Site Attendance Policy required employees to use newly introduced fingerprint scanners to sign on and off the work site.

Mr Lee refused to provide his fingerprint for the purposes of signing on and off the worksite, citing concerns about the control of his biometric data and the inability of Superior Wood to guarantee no third party would be provided access or use of the data once stored electronically.

Fair Work Commission's initial decision

In the initial decision of the FWC, the Commissioner found that the Policy was not unjust or unreasonable because, amongst other reasons, Superior Wood had the right to require employees to comply with the Policy, and refusal to comply after adequate warning would not render any dismissal invalid.

The Commissioner also found that although biometric data is 'sensitive information' for the purposes of the Privacy Act 1988 (Cth) (**Privacy Act**), it was reasonably necessary to collect the information for one or more of Superior Wood's functions or activities under Australian Privacy Principle (**APP**) 3.3.[54]

The Commissioner found that although Mr Lee was entitled to withhold consent, in doing so he failed to meet a reasonable request of his employer and consequently Superior Wood had a valid reason for dismissal.[55]

Appeal Decision

Mr Lee was granted the right to appeal on 9 grounds, including:

- the finding that failure to comply with the Policy was a valid reason for dismissal, given potential breaches of the Privacy Act and despite the finding that Mr Lee was entitled to refuse to provide his biometric data; and
- the finding that there was no breach of the Privacy Act with respect to the collection of information from Mr Lee, because his data was never collected.

Contractual requirement to comply with the Policy

The FWC found that a strict reading of Mr Lee's employment contract could be read to suggest that Mr Lee was only bound by any policies, procedures and work rules in place *at the time of entry* into the contract.[56] As the policy in question came into existence following Mr Lee's employment and there was no variation to the contract, the Commission was not satisfied that compliance with the Policy was a term of Mr Lee's employment.[57] Consequently, Mr Lee's obligation to comply with the Policy was dependent on whether the direction to comply was reasonable and lawful.[58]

[54] *Jeremy Lee v Superior Wood Pty Ltd* [2019] [14].
[55] Ibid [15].
[56] Ibid [23].
[57] Ibid [24].
[58] Ibid [25].

APP 3

APP 3 outlines when a regulated entity may collect solicited personal information. The FWC's interpretation of APP 3 is that it applies both to solicitation and collection of personal information and therefore operates at a time before the information is collected. Consequently, any collection of personal information that occurs without first having obtained consent to that collection would be in breach of APP 3.[59] Although Superior Wood did not breach APP 3 in collecting Mr Lee's information, the direction to collect was directly inconsistent with APP 3.[60] Mr Lee was entitled to refuse to provide his biometric data to Superior Wood.[61]

Employee records exemption

Section 7B(3) of the Privacy Act contains an exemption from an employer's requirement to comply with the APPs in regards to an employee record held by the organisation and relating to the individual directly related to a current or former employment relationship.

The FWC did not agree that the fingerprint scanners fell under the employee records exemption, as it was inconsistent with the plain words of the statute, which are in the present tense and refer to a record in the possession or control of the organisation.[62] The FWC stated that a record is not held if it has not yet been created or is not yet in the possession or control of the organisation and consequently the exemption will not apply to a thing that doesn't exist or to the creation of future records.[63]

As the employee records exemption does not apply in these circumstances, the APP applied to Superior Wood in connection with the solicitation and collection of sensitive information, up until the point of collection. Once collected, the employee records exemption will apply and the Privacy Act will no longer regulate the information's use or disclosure.[64]

Was the direction lawful?

The FWC found that the direction given to Mr Lee and other employees was not lawful. Any consent Mr Lee may have provided once informed he may be disciplined or dismissed for failing to provide consent would likely not be considered genuine consent.

Although it was not necessary to determine whether the direction was reasonable, the FWC stated that the direction was not reasonable, finding:

A necessary counterpart to a right to consent to a thing is a right to refuse it. A direction to a person to give consent does not vest in that person a meaningful right at all.[65]

Decision

The FWC decided to uphold the appeal and quash the decision,[66] which in turn required a rehearing of the case. The FWC was then required to weigh up the factors listed in section 387 of the Fair Work Act as to whether there was a valid reason for the dismissal.

At the rehearing, it was found that the fact there was no valid reason for the dismissal was a significant factor in the circumstances of the case. Although Superior Wood followed the rules of procedural fairness, the weight given to this was not sufficient to outweigh the significance of an absence of valid reason.[67] Accordingly, the dismissal was unjust because Mr Lee was not guilty of the alleged conduct.[68] As the direction Mr Lee was provided was unlawful, he was entitled to refuse to follow it.[69]

17. Significantly Higher Penalties for Corporate Misconduct in Effect

The *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (**Amending Act**) received Royal Assent and commenced operation on 13 March 2019. It strengthened existing corporate laws and introduced harsher penalties for offences and contraventions of civil penalty provisions under the *Corporations Act*, *NCCP Act*, *ASIC Act* and *Insurance Contracts Act 1984*.

For offences under the *Corporations Act*, *NCCP Act* or ASIC Act on or after 13 March 2019, the maximum penalty for individuals is:

- if only a fine is specified, the fine specified;
- if only a term of imprisonment less than 10 years is specified, the term of imprisonment specified or a fine for the number of penalty units equal to ten times the term of imprisonment specified (in months), or both; or

[59] Ibid [47].
[60] Ibid [48].
[61] Ibid.
[62] Ibid [53].
[63] Ibid [56].
[64] Ibid [57].
[65] Ibid [58].
[66] Ibid [90].
[67] Ibid [102].
[68] Ibid.
[69] Ibid.

– if only a term of imprisonment of 10 years or more is specified, the term of imprisonment specified or a fine the greater of 4,500 penalty units ($945,000) or three times the benefit derived or detriment avoided because of the offence; and

The maximum penalty for bodies corporate is:

– if only a fine is specified, ten times the fine specified;

– if only a term of imprisonment less than 10 years is specified, a fine for the number of penalty units equal to 100 ten times the term of imprisonment specified (in months); or

– if only a term of imprisonment of 10 years or more is specified, a fine the greater of 45,000 penalty units ($945,000), three times the benefit derived or detriment avoided because of the offence or 10% of the annual turnover of the body corporate for the 12 month period ending at the end of the month in which the body corporate committed or began to commit the offence.

For contraventions of civil penalty provisions under the *NCCP Act* or *ASIC Act* on or after 13 March 2019, the maximum pecuniary penalty for individuals is the greater of the penalty specified for the provision or three times the benefit derived or detriment avoided because of the contravention.

For bodies corporate the maximum penalty is the greater of:

– ten times the penalty specified for the provision;

– three times the benefit derived or detriment avoided because of the contravention; or

– the lesser of 10% of the annual turnover of the body corporate for the 12 month period ending at the end of the month in which the body corporate contravened or began to contravene the provision or 2.5 million penalty units ($525 million).

For contraventions of civil penalty provisions under the Corporations Act, the maximum pecuniary for individuals is 5,000 penalty units ($1.05 million) or three times the benefit derived or detriment avoided because of the contravention.

The maximum pecuniary for bodies corporate is the greater of:

– 50,000 penalty units ($10.5 million);

– three times the benefit derived or detriment avoided because of the contravention; or

– the lesser of 10% of the annual turnover of the body corporate for the 12 month period ending at the end of the month in which the body corporate contravened or began to contravene the provision or 2.5 million penalty units ($525 million).

The Amending Act also replaces the infringement notice provisions in the *Corporations Act, NCCP Act* and *ASIC Act* with a more clearly set out (but not substantially different) infringement notice regime.

The Amending Act also contains miscellaneous penalty changes for particular provisions of the affected statutes. Most notably, contravention of a number of the general conduct obligations of credit and financial services licensees, including the obligation to act efficiently, honestly and fairly, is made a civil penalty provision.

18. ASIC Consulting on RG 209 Update

On 14 February 2019, ASIC announced that it is reviewing and planning on updating Regulatory Guide 209: Credit licensing: Responsible lending conduct (**RG 209**). ASIC published Consultation Paper 309: Update to RG 209: Credit licensing: Responsible lending conduct (**CP 309**) on 14 February 2019.[70] RG 209 has not been revised in four years, with a number of judicial decisions, ASIC issue-specific reviews, non-judicial enforcement action and the Banking Royal Commission occurring in the interim.

CP 309 suggests, and requests feedback on, the following matters referred to below.

Reasonable inquiries and verification

ASIC is considering whether to identify particular inquiries and verification steps that would apply generally to consumer contracts as a minimum level of inquiry required.[71] ASIC notes the uncertainty surrounding its guidance on the issue in RG 209 and will remain open to licensees performing a lower level of inquiry and verification if they can demonstrate that it is reasonable in the circumstances to do so.[72]

Verification sources

ASIC proposes to clarify its guidance about the kinds of information that can be used to verify a

[70] ASIC, '19-028MR ASIC consults on updated its responsible lending guidance', media release, 14 February 2019, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-028mr-asic-consults-on-updating-its-responsible-lending-guidance/.
[71] CP 309, Proposal B1.
[72] CP 309, [15].

consumer's financial situation and provide a more expansive list of forms of verification that it considers to be readily available to licensees in most circumstances.[73] CP 309 includes a list of sources from which information about a consumer's financial information can be verified.[74]

The updated sources, which is more extensive than Table 4 in the current RG 209, has a greater focus on a consumer's expenses and their balance sheet, rather than just their income.

CP 309 also expresses ASIC's view that what amounts to 'reasonable steps' to verify information will change over time, as new forms or sources of information become available to licensees. It flags incoming mandatory comprehensive credit reporting and open banking (i.e. the consumer data right) as affecting what will constitute reasonable inquiries in future. If a form of verification is reasonably available to a licensee, ASIC will expect them to have regard to it.[75]

Benchmarks

The proposed updated guidance to benchmarks would stress that benchmark values do not provide any positive confirmation about a consumer's actual income or expenses, but can be a useful tool to help determine whether information provided by the consumer is plausible.[76] The updated guidance is influenced significantly by ASIC's reviews into home loan markets, which found that some credit providers used benchmark values in place of consumers' actual expenses and that a significant number of broker-originated home loans had the consumer's declared expenses equal to the benchmark amount used by the lender.[77]

Updating the guidance on benchmarks will hopefully confirm that they may be legitimately relied on however, only for the purpose of ascertaining the reliability of information provided by consumers.

Inquiring into consumers' requirements and objectives

ASIC has shown an intention to update what constitutes reasonable inquiries into the consumer's requirements and objectives to reflect its findings in Report 493: Review of interest-only home loans: Mortgage brokers' inquiries into consumers' requirements and objectives. The proposed updated guidance will require licensees to make sufficient inquiries into a consumer's specific requirements and objectives to enable them to demonstrate how the specific features of a loan or lease meet those requirements and objectives. The proposed updated guidance will also require licensees to clearly document the steps that they take to inquire into a consumer's requirements and objectives and to reconcile the loan/lease product features against those requirements and objectives.

When responsible lending obligations do not apply

ASIC proposes to include guidance on situations where the responsible lending obligations do not apply, particularly in relation to small business lending.

Fraud risk and responsible lending obligations

It appears ASIC intends to include updated guidance on dealing with the risk of loan fraud in performing responsible lending obligations, including risk factors that would provide cause for further verification.

Using repayment history information

ASIC proposes to include guidance discouraging licensees from using negative credit history too harshly, emphasising that past repayment difficulties on one product do not necessarily mean that a consumer will be unable to meet their obligations on a new credit product.[78] ASIC wishes for licensees to perform additional inquiries to understand the cause of the past repayment difficulties and how they have been managed.[79]

Record keeping and written assessments

Finally, ASIC proposes new 'best practice' guidance about the kinds of information licensees should record for the purpose of enabling them to demonstrate, if required, compliance with inquiry, verification and assessment obligations. The proposed guidance mirrors ASIC's recommendations in REP 493 namely:

- with licensees to record to a consumer's file all information collected that is material to unsuitability
- develop tools to guide information collection and verification
- to prepare concise narrative summaries about a consumer's requirements and objectives, and

[73] CP 309, Proposal C1.
[74] CP 309, Appendix 1.
[75] CP 309, [20]-[21], [28].
[76] CP 309, Proposal C3.
[77] CP 309, [32]-[36].
[78] CP 309, Proposal D3.
[79] CP 309, [79]-[81].

– how the credit product recommended or entered into meets those requirements and objectives.

In relation to written assessments, which a licensee may be required to give to a consumer under section 120 or 133 of the *NCCP Act*, ASIC proposes to include in the updated RG 209 additional, specific guidance about what they should contain. CP 309 contains a sample written assessment template setting out the kinds of information that ASIC expects to be collected and the way in which the assessment can be structured.[80] The purpose is so that:

– a consumer can understand why the loan or lease has been assessed as not unsuitable for them, and

– the licensee can demonstrate compliance with the obligation to assess whether or not the contract is unsuitable.

We expect to see an updated RG 209 by December 2019. However, with the Westpac decision on appeal, we may see reduced updated guidance until the appeal is heard.

19. Online Small Business Lenders Signing Up to AFIA Code

The list of online small business lenders who have gained approval to be signatories to AFIA's Online Small Business Code of Lending Practice (**Code**) is increasing, with seven lenders now signatories. This include Capify, GetCapital, Moula, OnDeck, Prospa, Spotcap and Lumi.

Small business borrowers will benefit from the Code, with increased transparency and disclosure on pricing. Borrowers also have the added protection of lenders being overseen and governed by an experienced independent Code Compliance Committee. The committee consists of chair, Symon Brewis-Weston, Bruce Auty and Piper Alderman Partner, Andrea Beatty.[81]

Launched by AFIA on June 29 2018, the Code supports small business borrowers by:

– giving them a tool (the SMART BoxTM) to easily compare different online lenders' small business loan product pricing using several metrics standardised in calculation and presentation

– providing a clear and concise loan summary sheet before a loan is accepted so they can see the key features of a product.

– ensuring Code-compliant lenders evidence compliance with Unfair Contract Terms provisions as well as other relevant laws

– providing them with a visible and readily identifiable accreditation symbol or 'trustmark' that confirms their Online Small Business Loan is Code-compliant

– ensuring they have access to an external dispute resolution service as all Code compliant members are also members of the Australian Financial Complaints Authority (AFCA), and

– having a Code Compliance Committee (CCC) oversee Code-compliant lenders' compliance with the Code.[82]

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell believes the Code is a great starting point, by helping to address transparency and disclosure for small business borrowers.[83]

20. New Whistleblowing Laws Passed

On 19 February 2019, the long awaited reforms to Australian whistleblower legislation was passed by Parliament. The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) (**Whistleblower Act**) took effect from 1 July 2019.

The significance of the Whistleblower Act lies in its ability to harmonise current whistleblower regimes under federal law, expand protections and remedies and create a regime for tax-related misconduct and contraventions. The amendments will apply to disclosures made on or after the commencement of the Act which may extend to matters that may have occurred before commencement. However, matters relating to compensation and remedies will apply retrospectively to disclosures made prior to commencement.

The main ramifications include:

– requiring public companies and large proprietary companies to entrench mandatory whistleblower policies with mandatory content;

[80] CP 309, Appendix 2.

[81] Australian Finance Industry Association, 'Small businesses benefit as online lenders achieve compliance with product and industry code', media release, 7 January 2019, https://static1.squarespace.com/static/598589963e00bec843be0ea1/t/5c32ee9a032be4fbaf37a519/1546841758031/AFIA+OSBL+Code+Compliance+Media+Release+-+7+January+2019.pdf.

[82] Ibid.

[83] Australian Small Business and Family Enterprise Ombudsman, 'Online small business lenders release code of practice to improve transparency, media release, 29 June 2019 https://www.asbfeo.gov.au/news/news-articles/online-small-business-lenders-release-code-practice-improve-transparency.

- the facilitation of protected disclosures relating to misconduct, including the existence of an 'improper state of affairs';
- providing protection to a wider range of people than under the previous draft;
- providing protections to eligible whistleblowers on the basis that the disclosure was made to an 'eligible recipient', which includes officers and senior managers;
- allowing for anonymous disclosures;
- the exclusion of most personal work based grievances from protection;
- allowing for 'emergency' or 'public interest' disclosures to be made directly to the Media or Parliament in the most extreme cases;
- expanding the remedies available to whistleblowers who suffer backlash by improving access to compensation;
- the provision of a reverse onus of proof where an individual seeks compensation, once they have established they suffered detriment.

There are significant penalties for both corporations and individuals who are in contravention of the Whistleblower Act. Civil penalties under the *Corporations Act* include breach of confidentiality or victimisation/threatened victimisation of whistleblower which can result in:

- 5,000 penalty units ($1.050M) or three times the benefit derived/detriment avoided for an individual, and
- 50,000 penalty units ($10.5M), three times the benefit derived/detriment avoided or 10% of annual turnover (up to 2.5 million penalty units) for a body corporate.

Criminal offences under the *Corporations Act* for:

- a breach of confidentiality or identity of a whistleblower[84]may result in:
  - during the transition period, 30 penalty units ($25,200) or six months imprisonment, or both, and
  - For conduct after commencement six months imprisonment,
- the victimisation or threatened victimisation of a whistleblower may result in:
  - during the transition period, penalty units ($25,200) or two years imprisonment, or both, and[85]
  - for conduct after the commencement, two years imprisonment

Failure to implement a whistleblower policy is a strict liability offence resulting in 60 penalty units (currently $12,600).

On 1 July 2019, ASIC released two new information sheets regarding the rights and protections afforded to whistleblowers of a company's misconduct under the *Corporations Act*.[86] The *Corporations Act* now allows whistleblowers to maintain their confidentiality, prevent suffering and threatened detriment and allows them to seek compensation if they have suffered a loss, damage or injury for making the disclosure.[87] To ensure whistleblowers are aware of their rights and protections, ASIC has updated and issued two new information sheets – Information Sheet 238 – Whistleblower rights and protections (**INFO 238**) and Information Sheet 239 – How ASIC handles whistleblower reports (**INFO 239**) to assist them.

INFO 238 explains the legal definition of a whistleblower, how a whistleblower can access their legal rights and protections, what protections are available to whisteblowers and when such protections may not be available to them.

INFO 239 explains what types of whistleblower reports that ASIC may receive, ASIC's role in relation to whistleblowers, how they deal with the information disclosed by whistleblowers, how they pursue alleged breaches of the whistleblower protections, how they communicate with whistleblowers and ASIC's Office of the Whistleblower's role.

[84] *Corporations Act 2001* (Cth) s 1317AAE as introduced by the Whistleblower Bill ss 2, 15.

[85] *Corporations Act 2001* (Cth) sch 3, as to ss 1317AC(1), (2) and (3) and as amended by the Whistleblower Bill s 13.

[86] ASIC, '19-164MR New regime for corporate whistleblower protections commences today', media release, 1 July 2019, https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-164mr-new-regime-for-corporate-whistleblower-protections-commences-today/.

[87] Ibid.

PiperAlderman

Our Team

Andrea Beatty

Partner

E: abeatty@piperalderman.com.au

D: +61 2 9253 3818

Elaine Cheung

Senior Associate

E: echeung@piperalderman.com.au

D: +61 2 9253 3821

Chelsea Payne

Lawyer

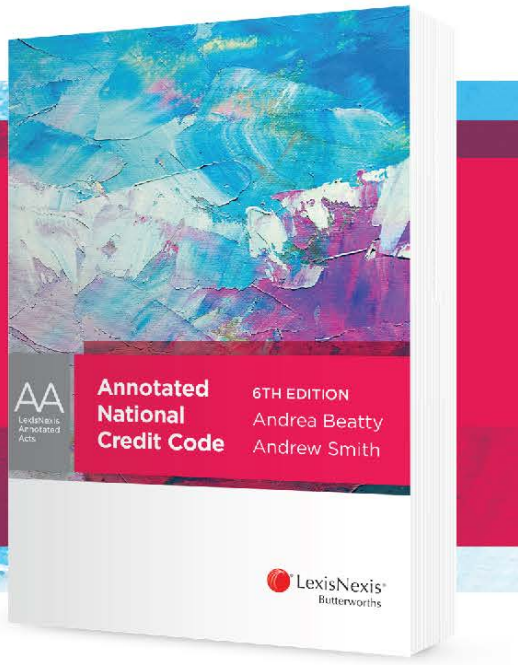
E: cpayne@piperalderman.com.au

D: +61 2 9253 3840

Annotated National Credit Code
6th edition

Andrea Beatty
Andrew Smith

An essential guide to consumer credit regulation in Australia



Annotated National Credit Code 6th edition is an essential guide to consumer credit regulation in Australia. It is a user- friendly practical guide for businesses, regulators, external dispute resolution schemes, consultants, compliance officers, credit agencies, consumer advocates and legal practitioners.

This new edition provides a comprehensive update on issues involving the provision of credit to consumers or strata corporations under the National Consumer Credit Protection Act 2009 (Cth) (NCCP) and the National Credit Code (NCC). It includes commentary on:

- responsible lending
- referral arrangements
- unfair contract terms
- transactions regulated by the NCC, including credit contracts (including continuing credit contracts, small amount credit contracts, medium amount credit contracts and reverse mortgages), mortgages and guarantees, consumer leases and insurance
- statements of account
- payouts and surrender of goods
- formal requirements for documents and other notices
- disclosure obligations (including credit guides and key facts sheets)
- procedural matters including obligations imposed on increases in credit limits or amount of credit
- compliance and enforcement
- penalties.

About the Authors

Andrea Beatty is a Partner at national law firm Piper Alderman. Previously a Partner at Mallesons Stephen Jaques (now King & Wood Mallesons), she brings legal capability and insights into regulatory matters, corporate governance, compliance and risk management. She holds a Bachelor of Laws (Honours) from the University of Adelaide and a Master of Laws from Cambridge University. Andrea advises on all aspects of financial services, including product development, compliance strategies, regulatory investigations, compliance audits and pro forma documentation. She also designs and constructs financial services training.

In the first four editions of this text, Andrea worked with co-author **Andrew Smith**, a former deputy ombudsman at the Credit Ombudsman Service. Previously Andrew was also Head of Legal at National Australia Bank; General Counsel and Vice President, Legal and Compliance at GE Money Australia and New Zealand; and Partner at Mallesons Stephen Jaques (now King & Wood Mallesons).

Table of Contents

Publication Date: November 2019

ISBN: 9780409349566 (softcover)
RRP * incl. GST: $260.00

ISBN: 9780409349573 (eBook)
RRP * incl. GST: TBC

*Prices include GST and are subject to change without notice. Image displayed is only a representation of the product, actual product may vary.

LexisNexis

To make a purchase please visit store.lexisnexis.com.au or contact your Account Manager, or call Customer Support toll free on 1800 772 772.

Order Form

PERSONAL DETAILS

Name _____

Job Title _____

Company Name _____

Street Address _____

Email _____

Telephone _____

Signature _____

Date _____

(All orders must be signed for processing)

Attach EFTPOS receipt - Merchant copy

Order Type *(please tick appropriate box)*

- ☐ Book Taken (issue tax invoice)
- ☐ Send Book and issue tax invoice
- ☐ Pre-order (contact via phone for payment)

ORDER DETAILS

Title	ISBN	Quantity	Price

Promotional Code: Discount Amount

Total *(including discount amount)*

I would like to pay using *(please tick appropriate box)*

- ☐ My LexisNexis® Account No.:
- ☐ Personal/Company cheque enclosed (payable to LexisNexis)
- ☐ EFTPOS ☐ Visa ☐ Mastercard ☐ AMEX

4 Ways to Order	Phone	Email	Post	Visit
	1800 ///2 ///2	order@lexisnexis.com.au	Reply paid 61280	store.lexisnexis.com.au

TERMS AND CONDITIONS

*All prices are in AUD, include GST and are current as of 10/01/2019. Prices are subject to change and all orders remain valid until cancelled in writing.
*Postage and handling may incur an extra charge.

PRIVACY NOTICE

LexisNexis is committed to maintaining your privacy, and we want you to understand how we use and manage your data. In order to improve our services and provide better content, LexisNexis may keep track of patterns of use in the e-mails and e-mail newsletters we send. We note which links are clicked in our email communications as specific user profile information to tell us what areas are most interest to our recipients. In most cases, this information will be used in aggregate form, but sometimes personally identifiable information will be shared within LexisNexis's global organisation for the limited purposes described above. Please review our privacy statement for additional information. By supplying LexisNexis your information, you have given us permission to communicate to you via mail, e-mail, SMS, MMS and telephone to inform you about our services we deliver relevant to your industry indefinitely. If you wish to obtain a copy of our data privacy policy, access the personal information we hold about you or personal information is inaccurate, incomplete or outdated, please contact our Privacy Officer at LexisNexis Australia or email privacy@lexisnexis.com.au and we will provide you with a copy of our data privacy policy, take reasonable steps to provide you with access to your personal information or correct the information. If you do not wish to receive such communications as outlined above, please contact us at privacy@lexisnexis.com.au to unsubscribe.

☐ Tick this box if you do not wish to receive information about our other products, services, offers, or events.

LexisNexis