

Article Information

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Banking & Finance Summary Updates - September 2020

There have been numerous updates in the industry over the past months from regulators and the Government.

- On 25 September 2020, Treasurer Josh Frydenberg [announced a proposed major overhaul to responsible lending laws](#). The proposed changes seek to remove responsible lending rules for banks and mainstream lenders, shifting the emphasis from “lender beware” to “borrower beware.” This change will see the removal of ASIC from enforcing the responsible lending rules for said institutions. Instead, ADI’s will need to comply with APRA lending standards (and APRA will supervise this). Key elements of those lending standards will apply to non-ADI’s. Small amount credit contracts and consumer leases however will be exempt from the changes and will continue to be monitored by ASIC.
- On 13 August 2020 [ASIC published its expectations of retail lenders](#) when loan repayment deferrals end in the coming months. Expectations include taking reasonable steps to contact consumers prior to their 6 month deferral expiring and providing information that will assist in their decision making. Moreover it is expected lenders communicate directly with consumers in order to understand their individual circumstances and deliver tailored assistance. ASIC is also working alongside APRA who recently released figures indicating that close to 9% of total loans had been granted temporary repayment deferrals. On the 22 September 2020, [APRA issued a letter to authorised deposit taking institutions](#) outlining areas of better practice for the management of repayment deferrals consistent with the guidance provided by ASIC.
- On 29 July 2020, the Commonwealth Government passed the Electronic Transactions Regulations 2020 (Cth) (Regulations), to allow for a number of credit documents relating to guarantors to be sent electronically.
- In response to the submission received to Consultation Paper 324 Product intervention: The sale of add-on financial products through caryard intermediaries, [ASIC has made several changes](#) to the proposed product intervention order and is seeking feedback from interested stakeholders. The changes include provision for a general transition period of three months from the day it is registered. AFCA has welcomed the product intervention order stating that products concerned provide consumers with “little to no benefit.”^[1] For a detailed summary of the earlier proposed product intervention power see our [previous insight](#).
- On 25 August 2020 ASIC issued guidance on the Government’s enhanced regulatory sandbox (ERS) launched on 1 September 2020. The ERS exemption enables individuals and businesses to test eligible innovative financial services or credit activities for 24 months without the need for an Australian financial services licence or Australian credit licence. To be eligible for the ERS exemption, individuals and businesses must satisfy the minimum requirements including a net public benefit test and innovation test. There are also a number of limitations on the types of services and products that may be provided as well ongoing conditions. The licensing waiver is intended to facilitate innovation through longer testing periods for a broader range of financial services and credit activities.
- On 31 August 2020, [ASIC](#), APRA and [OAC](#) released an updated Corporate Plan, outlining their priorities and key activities over the next four years. Common among all is the strategic prioritisation of the challenges posed by COVID-19 and management of its financial impact.
- [The definition of “consumer”](#) in section 3 of the Australian Consumer Law (ACL) and s 12BC of the ASIC Act will be expanded when the monetary threshold increases from \$40,000 to \$100,000 on 1 July 2021. The amendment follows recommendations from the Australian Consumer Law review and will expand the consumer guarantee protections in the ACL to a greater number of consumers. Businesses will be granted 12 months to educate staff on the wider range of products caught by the regime and update their compliance programs .
- On 20 July 2020 the Western Australia Department of Health was alerted to a breach of confidential data made publically available on a website after it was distributed over a third-party paging service. Published paging messages contained confidential health data including patients suspected of having COVID-19. The Government of

WA Department of Health released a statement saying they immediately contacted the paging service provider and had the website shut down within hours. In response, the OAIC are making preliminary inquiries into the circumstances of the breach.

- On 28 August APRA and ACCC signed an [updated memorandum](#) of understanding detailing their agreed level of engagement, cooperation and information sharing. The updated document is intended to strengthen the relationship between the two agencies whose collective role is to protect and deliver benefits to all Australians. Under the memorandum, APRA and the ACCC have agreed to take a more proactive approach to engagement and the importance of collaboration to address COVID-19 related challenges.
- ASIC has released a new instrument granting relief to responsible entities (REs) of frozen funds in anticipation of growing demands from members making withdrawals on hardship grounds. The ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/77 is operative until 27 August 2025, providing conditional relief to RE's from several obligations outlined in Chapter 5 of the Corporations Act including the duty to treat members of the same class equally. RE's seeking to rely on the new instrument must supply ASIC with a notice of reliance.
- On 2 September 2020 [The Crimes Legislation Amendment \(Economic Distribution\) Bill 2020 \(Cth\)](#) was introduced into the House of Representatives. The Bill proposes to expand ML/TF offences and increase penalties. Broadly, the Bill will update money laundering offences to address modern money laundering networks and remove burdensome obstacles to secure convictions. It also purports to strengthen information gathering powers under the Proceeds of Crime Act by increasing penalties for non-compliance and clarifying the circumstances in which information gathered under these powers can be disclosed and used. The Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee on 3 September and is due for reporting by 10 November 2020.
- On 24 August 2020 AUSTRAC released the next suit of [resources](#) in its Insight Series intended to assist reporting entities assess and manage ML/TF risks. Resources include a guidance documents, a video animation and updated web content.
- The Financial Action Task force (FATF) released on 16 June 2020 updates on AML/CTF compliance. The updates identify high risk jurisdictions including Iran and the Democratic Peoples Republic of Korea as having significant strategic deficiencies in their regimes to counter AML/CTF.

[1] Australian Financial Complaints Authority, '[AFCA makes submission to ASIC's product intervention power on add-on motor vehicle financial risk products consultation](#)' (Media Release, 19 August 2020).