

Article Information

Authors: Andrea Beatty, Chelsea Payne, Chloe Kim

Service: Anti-money Laundering & Corruption, Banking & Finance, Banking & Finance Litigation, Regulatory Compliance & Investigations

Sector: Financial Services

Banking & Finance Summary Updates - October 2019

There have been a number of updates in the industry over the past month from regulators and the Government.

1. On 24 September 2019, AUSTRAC appointed an external auditor to assess the ongoing concerns about PayPal Australia's compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, particularly in relation to PayPal Australia's requirement to abide by the International Funds Transfer Instruction reporting obligations and report the transfer of funds or property to or from Australia.
2. On 27 September 2019, Cigno Pty Ltd made an application in the Federal Court of Australia in New South Wales seeking to declare the ASIC Corporations (Product Intervention Order - Short Term Credit) Instrument 2019/917 (Short Term Credit PIO) invalid.
3. On 2 October 2019, ASIC's Corporate Governance Taskforce released a [report](#) on Director and officer oversight of non-financial risk. The report follows a prior review undertaken of seven large financial institutions, 60 interviews with directors and officers, an extensive documentation review, and external resources. ASIC found through the report that companies need to apply greater focus and urgency regarding the oversight and management of non-financial risk.
4. On 30 September 2019, ASIC released Consultation Paper 323: *Review of school banking programs* which requested the public's input about school banking programs which forms part of the regulatory body's ongoing review of their use and impact in primary schools. Interested members and organisations have until 31 October 2019 to [respond](#) to the consultation questions.
5. On 17 September 2019, ASIC released a remade [ASIC Corporations \(Changing Scheme Constitutions\) Instrument 2019/700](#) which continues to provide relief to vary how the constitution of a registered scheme can be modified, repealed or replaced. This relief was made following ASIC's Consultation Paper 320: *Remaking ASIC class order on changing scheme constitutions [CO 09/552]* which received no submissions in response.
6. On 19 September 2019, ASIC re-issued [Information Sheet 29 External administration, controller appointments and schemes of arrangement - most commonly lodged forms](#) (INFO 29) to reflect the changes the *Insolvency Law Reform Act 2016* had on the *Corporations Act 2001* and is in accordance with the Australian Restructuring Insolvency Turnaround Association's revisions. INFO 29 was released to assist liquidators comply with their lodgement requirements.
7. On 19 September 2019, ASIC released the ASIC Corporations Unclaimed Superannuation - Former Temporary Residents [Instrument 2019/873](#) which remakes Class Order [CO 09/437] *Departed former temporary residents superannuation - Disclosure relief* which was due to expire on 1 October 2019. The new instrument will continue to provide relief for trustees of regulated superannuation funds from certain obligations in accordance with the *Corporations Act 2001* and from the requirement to notify and give exit statements to departed former temporary residents when their superannuation benefits are paid to the ATO.
8. On 23 September 2019, ASIC released [Report 630: ASIC regulation of corporate finance: January to June 2019 \(REP 630\)](#) which provides an oversight of corporate finance activity between January to June 2019 and specific focus areas for the next six months.
9. On 4 October 2019, ASIC released a statement to warn AFS licensees that they must lodge their annual financial statements and auditor reports by the due date as instructed in the *Corporations Act 2001* or otherwise risk regulatory consequences.
10. On 28 September 2019, APRA began to consult on its first data collection to assess private health insurance reforms. A consultation draft Reporting Standard HRS 605.0 Private health Insurance Reform Data Collection was issued to private health insurers alongside an explanatory letter regarding the purpose and terms of the

consultation.

11. On 27 September 2019, ACCC proposed to impose conditions on the Australian Banking Association's Banking Code of Practice to ensure it will benefit low-income consumers and drought-affected farmers.
12. On 11 September 2019, the Government released for public consultation exposure [draft regulations](#) to support the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*. The proposed draft regulations extend the ambit of the design and distribution obligations to apply to financial products such as:
 - a. simple corporate bonds depository interest;
 - b. debenture of a body that is either an authorised deposit-taking institution or a registered life insurance business;
 - c. basic banking products; and
 - d. custodial services such as an interest in an investor directed portfolio service.
13. On 11 September 2019, the Government released the ASIC Enforcement Review Taskforce Report in response to recommendations regarding Search Warrants, Access to Telecommunications Intercept Material, Licensing and Banning Orders. The draft legislations aims to:
 - a. strengthen ASIC's licensing powers by changing AFS Licence requirement that a person be of "good fame and character" with the requirement that they be a "fit and proper person";
 - b. aligns penalties for false and misleading statements in AFS and Australian Credit License applications;
 - c. allows ASIC to ban a person from performing functions in a financial service or credit business and the grounds in which they can issue banning orders;
 - d. harmonises ASIC's search warrant powers across different Acts; and
 - e. allows interception agencies to provide lawfully intercepted information to ASIC when there have been serious offences which they can investigate or prosecute.