Annual Members' Meeting Notices

KEY MESSAGE

- The Government is promoting meaningful transparency by ensuring super fund members receive simple and clear information with the Annual Members' Meeting (AMM) notice.

KEY FACTS AND FIGURES

- Superannuation funds are required to provide certain information with AMM notices.
- This disclosure is designed to assist members in preparing questions ahead of the meeting.
- The question and answer process in the meeting remains the primary method for members to obtain relevant information.
- On 2 September 2022, the Superannuation Industry (Supervision) Amdendment (Annual Members' Meetings Notices) Regulations 2022 (the Regulations) were registered.
- The Regulations amend the expenditure information provided with the AMM notice to:
  - remove itemised disclosure for certain expenditure but retain itemised disclosure of political donations;
  - remove double-counting where an amount could be classified as both promotion expenditure and a political donation;
  - reduce content restrictions on the one-page summary of aggregate expenditure; and
  - align the definition of 'related party' with the Australian Accounting Standards.
- The changes apply to meeting notices issued from 9 September 2022 for a year of income ending on or after 30 June 2022.

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- The Government’s approach ensures members are provided with summarised information that better aligns with the purpose of the AMM notice disclosures and addresses stakeholder feedback on practical implementation issues with the previous requirements.

ADDITIONAL INFORMATION

- Public consultation on draft regulations occurred from 15 July 2022 to 28 July 2022.
- Treasury received 10 written submissions (see Background).
  - Superannuation industry organisations were supportive of the proposed changes which would reduce the original regulatory burden.
  - Some stakeholders did not support the changes on the basis that they would reduce transparency for members.
  - Several stakeholders highlighted that there may be other instances of double-counting expenditure (in addition to the double-counting of political donations which the exposure draft sought to address).
- In response, the Government has retained itemised disclosure of political donations, and permitted the inclusion of contextual information with the one-page summary of aggregate expenditure, to improve clarity for members.

Itemised Disclosure

- The Regulations remove the requirement for itemised disclosure for the following categories of expenditure:
  - promotion, marketing and sponsorship expenditure;
  - payments to industrial bodies; and
  - ‘related party’ payments.
- Funds will continue to be required to disclose an itemised list of ‘political donations’.
  - There is no change to the definition of ‘political donations’.

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  - 'Political donations' are defined by reference to 'gift' in Part XX of the *Commonwealth Electoral Act 1918 (the CEA).* It captures gifts made to political parties, significant third parties and associated entities as also defined by the CEA.

- There is still the requirement to disclose aggregate political donations, promotion expenditures, payments to industrial bodies, and 'related party' payments.
- There is no change to disclosure of remuneration details.
- This disclosure to members is separate to APRA's regulatory oversight of these matters.

Double-Counting

- The Regulations include a technical clarification to ensure amounts that could be classified as both 'promotion, marketing or sponsorship' expenditure, and 'political donations' are disclosed under the political donations category.
- Restrictions on including contextual information to support the disclosure of aggregate expenditure have been reduced. This will improve the clarity of the disclosure for members, particularly where expenditure is required to be disclosed in multiple categories.
- The different categories of expenditure disclosed with the AMM notices are not intended to be an exhaustive or mutually exclusive list of all fund expenditure. Each category should be considered separately.

Definition of related party

- The Regulations update the definition of 'related party' to align with the definition in the Australian Accounting Standards.
  - Many funds voluntarily publish their financial statements on their website. This created a situation where two separate disclosures for payments to a 'related party', yield different values.

Annual Members' Meeting Notices

- The definition in the Australian Accounting Standards is also the basis for reporting related party transactions in annual financial reports such as those prepared by companies, registered schemes and disclosing entities as required under the Corporations Act 2001.
- The amendments are expected to reduce the regulatory burden on superannuation funds as the revised definition of 'related party' is already used for the purposes of financial reporting. Publication costs are also expected to be lower.

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Annual Members' Meeting Notices

BACKGROUND

- AMMs are an opportunity for fund members to hear from the trustee's board of directors and executives and ask questions about important topics such as fund performance and operations.
- The requirement to hold an AMM was introduced by the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019*, which received Royal Assent on 5 April 2019.
- The AMM notice disclosure requirements were significantly extended by the *Superannuation Industry (Supervision) Amendment (Your Future, Your Super – Improving Accountability and Member Outcomes) Regulations 2021*, registered on 5 August 2021.
- The next meeting notices for most superannuation funds are required to be sent to members before 31 December 2022.
  - There are approximately 10 funds who operate on an amended tax year who may have issued meeting notices under the requirements prior to the changes.
- List of submissions received:
  - Australian Institute of Superannuation Trustees
  - Association of Superannuation Funds of Australia
  - CPA Australia and Chartered Accountants Australia and New Zealand
  - Financial Services Council
  - Industry Super Australia
  - Law Society of NSW
  - Mills Oakley
  - Senator Andrew Bragg
  - The Hon Stuart Robert MP
  - Super Consumers Australia

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Superannuation Guarantee Compliance

KEY MESSAGE

- The Government is committed to ensuring all Australians retire with adequate retirement savings, which is why we have no tolerance for employers who shortchange their workers by not paying them their superannuation entitlements. The Government has made commitments to include a right to superannuation in the National Employment Standards and to set public targets for the recovery of unpaid superannuation.

KEY FACTS AND FIGURES

- In 2021-21, the Australian Taxation Office (ATO) checked the records of over 15,500 employers for unpaid superannuation, of which over 12,200 led to a superannuation liability being raised.
- In 2021-22, the ATO paid out $645.4 million in previously unpaid superannuation to employees as a result of their enforcement and recovery activities.
- In 2019-20, the latest ATO estimates, the superannuation guarantee gap before ATO compliance activities was 5.9 per cent of all superannuation guarantee liabilities, or 4.9 per cent after compliance activities. The net gap of 4.9 per cent means that around $3.4 billion in superannuation guarantee payments remained unpaid after ATO compliance activities.

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Superannuation Guarantee Compliance

BACKGROUND

Government commitments

Including the superannuation guarantee (SG) in the National Employment Standards (NES)

- The Government will legislate to include a right to the SG within the National Employment Standards which will give Australian workers the power to pursue their unpaid superannuation as a workplace entitlement.
  - Employees currently do not have legal standing to pursue underpayment of superannuation unless it's specifically included in their employment contract. This means they need to rely on the ATO to recover unpaid SG.
- The inclusion of the SG in the National Employment Standards was recommended by the Senate Inquiry into unlawful underpayment of employees' (Recommendation 10).
  - The Inquiry report, 'Systemic, sustained and shameful: unlawful underpayment of employees' remuneration', was released on 30 March 2022.

Setting public targets for the recovery of unpaid superannuation

- The Government made a public commitment to set recovery targets for unpaid SG for the ATO and is currently working with the Treasury and ATO to develop these targets.

ATO recovery procedures

- Individuals can lodge a SG employee notification to tell the ATO their employer has not paid superannuation entitlements, paid late, or paid to the incorrect fund.
  - When an employee lodges an unpaid superannuation notification with the ATO they receive regular updates on the progress of their complaint through a series of letters. The updates advise the employee on the progress the ATO has made with the investigation of their complaint and/or what steps are being taken to recover the unpaid superannuation from their employer.

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- The ATO has legal responsibility and power to detect non-compliance and enforce employers' SG obligations. The ATO has the authority to:
  - Issue director penalty notices to recover SG from insolvent businesses and security bonds for high-risk employers;
  - seek court-ordered penalties in the most egregious cases of non-payment, including up to 12 months jail for employers who are repeatedly caught but fail to pay SG liabilities; and
  - inform all affected employees about their actions to recover unpaid super and display contribution information on MyGov.
- The continued rollout of Single Touch Payroll (STP) is making it easier than ever for employers to comply with their SG obligations. STP reduces the regulatory burden on business and transforms compliance by aligning payroll functions with regular reporting of taxation and superannuation obligations.
- STP phase two requires employers to report on ordinary time earnings for all employees, that is the employee income which attracts SG. STP phase 2 had a mandatory start date for employers of 1 January 2022 and the ATO is expected to have oversight of all employer reported ordinary time earnings data relevant to SG payments from the 2022-23 year onwards.

Payment frequency of superannuation

- While employers are required to pay employees' wages at least on a monthly basis, they are only required to pay their employees' superannuation quarterly.
  - The majority of employers pay SG more frequently than quarterly. In 2020-21, 78 per cent of all superannuation guarantee amounts were paid monthly, or more frequently (weekly or fortnightly).

Industry Super Australia estimates of unpaid superannuation

- Industry Super Australia (ISA) estimate that unpaid super affects more than a quarter of employees, costing each affected worker an average of $1,700 per year. They claim that in 2018-19, a total of $5 billion in SG was not paid, and that over each of the preceding six years, unpaid SG has totalled at least $4.5 billion per annum.
- ISA's estimates differ from the ATO's as the former relies on a bottom-up approach whereas the latter uses a top-down approach to calculate the SG gap.

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- ISA use a bottom-up approach whereby they rely on a sample of tax data (the ATO’s 2 per cent file) to estimate the SG gap and the number of employees impacted.
- The ATO uses a top-down approach to estimating the SG gap by comparing actual SG contributions for a year with the theoretical required SG contributions for that year.

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MILITARY SUPERANNUATION INVALIDITY PENSIONS

KEY MESSAGE

- The Government will shortly introduce legislation to amend the tax treatment of military invalidity pensions impacted by the Full Federal Court decision in *Commissioner of Taxation v. Douglas.* This will ensure that veterans will not pay higher taxes due to the Court's decision and still get to keep benefits from the decision.

KEY FACTS AND FIGURES

- The Douglas decision found that certain veterans' invalidity pension payments in the Defence Force Retirement and Death Benefits (DFRDB) and Military Superannuation Benefits (MSB) schemes are superannuation lump sums for income tax purposes rather than superannuation income stream benefits.
- A draft bill, *Treasury Laws Amendment (Measures for a later sitting) Bill 2022: Taxation of military superannuation benefits* was released for public consultation on the Treasury website between 25 July and 5 August.
  - The draft legislation confirms the lump sum tax treatment for affected members of the DFRDB and MSB schemes. The Government's approach means that affected veterans in the two affected schemes will not only retain the income tax benefits of the Douglas decision, but also benefits of changes in their taxable income, such as Family Tax Benefit entitlements.
  - The Government will also introduce a non-refundable tax offset to prevent any adverse income tax outcomes for affected veterans in the DFRDB and MSB schemes. This will address higher end of year tax liabilities that would have occurred for some of these veterans and enable the ATO and CSC to include the impact of the new offset in determining fortnightly tax withholding, in order to address higher withholding that has occurred for some veterans due to the Douglas decision.
  - These changes will also apply to Spouse and Children's pensions paid to a spouse or child following the death of a member of a DFRDB or MSB scheme affected by the Douglas decision.

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– The draft Bill also retrospectively and prospectively reverses the impact of the Douglas decision in relation to all schemes other than the invalidity benefits and death benefits for beneficiaries of invalidity pensioners paid from the DFRDB and MSB schemes that commence on or after 20 September 2007. This will ensure that payments in all other schemes that may have been within the wider scope of the Court's decision will continue to be taxed as superannuation income stream benefits, which is consistent with the intent of the current superannuation tax law.

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MILITARY SUPERANNUATION INVALIDITY PENSIONS

BACKGROUND

Full Federal Court's decision

- On 4 December 2020, the Full Federal Court handed down its decision for the Douglas case concerning the taxation of military invalidity benefits paid from the DFRDB and MSB Schemes.
- The Court found that military invalidity benefits paid under an invalidity pension that commenced on or after 20 September 2007 from the DFRDB scheme or the MSB scheme are to be taxed as superannuation lump sums and not as superannuation income stream benefits.
  - The successful applicants were Wayne Douglas and Shane Walker. Peter Burns was unsuccessful. No appeals were lodged to the High Court by the ATO or Mr Burns.
  - The Court found also found that benefits paid under an invalidity pension that commenced before 20 September 2007 (and have been continuously paid since that date) are to continue to be taxed as superannuation income stream benefits.

Impacts of decision

- While the Douglas decision provided a positive tax outcome for most affected veterans, it did create adverse taxation impacts for some veterans on a permanent basis. Some others will not be worse off on an annual basis but will have more tax withheld on a fortnightly basis from their pension.
  - This will result in some tax debts owing under the remediation program, and some individuals will have ongoing lower fortnightly pension payments.
- The outcome for individuals as a result of Douglas depends on their personal circumstances. The age of the recipients and size of payments can mean the interaction of the loss of income stream tax offsets and capping of tax rates on lump sums plays out unfavourably.

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- Where any amendments alter an individual's taxable income, there may also be financial impacts to other Commonwealth payments and obligations. The Government's response means this can be factored in by other Government agencies in assessing non-tax Commonwealth entitlements and obligations. The specifics of how this occurs is a matter for those agencies.
  - There can be changes to a veteran's taxable income, as well as tax outcome, as part of the shift in benefit taxation from income stream to lump sum. This is more likely to occur where the veteran has also been able to claim disability benefit status for income tax purposes.

Implementation of the Douglas decision to date

- In December 2020, the ATO commenced a remediation program to correct the tax treatment of past payments for affected veterans from the DFRDB and MSB schemes that arise from the Douglas decision, and assessed 2020-21 income tax returns lodged by affected veterans in line with the Douglas decision.
  - This will continue for 2021-22 income tax returns lodged until legislation is passed. After passage the new offset will be implemented by the ATO.
  - To date, the ATO has completed over 2,500 remediation activities. The ATO continues to review objections by veterans on their past year income tax assessments.
- From July 2021, CSC began applying the ATO's PAYG withholding variation for the affected veterans who CSC assessed would not face higher tax withholding.
  - However, in the absence of amended legislation, CSC was required to apply the withholding rates for all remaining veterans as soon as possible and began doing so from 19 May 2022.

Outcomes of consultation

  - During consultation, Treasury received 17 submissions from stakeholders, including from veterans and professional bodies.
  - Additionally, Treasury held discussions with various Government agencies, including an inter-agency meeting held on 21 July 2022, and hosted a meeting with veteran representatives on 10 August 2022.

MILITARY SUPERANNUATION INVALIDITY PENSIONS

Pre-decision taxation policy

- The taxation treatment of military invalidity pension payments has been an issue of dispute between the broader military superannuation taxpayer group and the ATO in recent years. The Defence Force Welfare Association has been actively campaigning in this area.
- Prior to the Douglas decision, the taxation treatment of a military invalidity benefit paid from a superannuation fund was treated equally to any other disability superannuation benefit. Notwithstanding, the taxation treatment of disability superannuation benefits, including from military funds, continues to be more concessional for some taxpayers compared to non-disability benefits.
  - For income stream benefits, people below preservation age receive a 15 per cent offset (from their marginal tax rate) if it has been financed from a previously taxed element. The highest tax rate faced is the recipient's full marginal tax rate (with no offset) which occurs when the recipient is under 60 years old and the benefit is financed from a previously untaxed element.
  - For lump sum benefits, any tax-free component applicable is increased based on number of years the recipient was forced to retire early due to disability. However, tax is applied on any other components at rates that can range between 15 per cent and recipient's marginal rate.
- More broadly, longstanding tax settings governing invalidity benefits from superannuation funds maintain that these are not compensation benefits for the purposes of the superannuation and taxation systems, but rather, are benefits paid earlier than retirement because the member is invalid and can no longer work (or work in an occupation for which the member was trained). Hence, taxation applies to such invalidity pension payments, including from the military schemes.

Q&A

How will the new tax offset ensure veterans don't pay more tax?

- The Douglas decision was concerned with the income tax treatment of the invalidity pension benefits from the DFRDB and MSB schemes. As such, the new non-refundable tax offset will ensure veterans do not pay higher tax as a result of the Court's decision.

- The offset will take into account the amount of tax an affected veteran would have paid had the Douglas decision not been delivered. It will ensure that veterans who would pay more income tax in a particular year than if the invalidity pension were to still be treated as a superannuation income stream, would pay the same amount of tax as if the change had not occurred.

What are the impacts for non-tax payments and benefits for veterans from the Government's actions?

- Certain non-tax consequences arise because taxable income is relevant in determining either eligibility for, or the amount of, these payments, such as Family Tax Benefit and child support obligations.
- The Government's response, by allowing the Douglas decision to stand for affected veterans' invalidity benefits, means that reductions in taxable incomes that occur for those veterans who also have disability tax status can be factored in by other Government agencies in assessing non-tax Commonwealth entitlements and obligations. The specifics of how this occurs is a matter for those agencies.
  - The flow-on impacts are particulary relevant for veterans eligible for Disability Superannuation Benefit (DSB) status, as DSB alters the calculation of the tax-free amounts of a lump sum. Therefore, many affected veterans have begun claiming DSB following the Douglas decision, as it lowers their taxable income and increases the amount of payments they can receive.
  - For those Douglas-affected veterans who do not also have disability tax status there is no impact on their taxable incomes, so there is no taxable income change that flows through to non-tax Commonwealth entitlements and obligations from the Douglas decision or the Government's response.

Why are only veterans in the DFRDB and MSB schemes being compensated through the new offset?

- The Douglas decision was concerned with the direct income tax treatment of the invalidity pension benefits from the DFRDB and MSB schemes which commenced on or after 20 September 2007. As such, the Government's

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commitment is related to that direct income tax change caused by that decision.

- The Full Federal Court made no decisions in relation to other schemes and the ATO has only released a decision impact statement in relation to the two schemes mentioned by the Court. The Government's response only covers the schemes directly referenced by the Court's decision, which was clear that the pre-20 September 2007 benefits from these schemes were still income streams.

- There is no policy rationale for extending the Douglas decision tax treatment and proposed new tax offset to other invalidity schemes and benefits given that they are common law pensions and should be treated as superannuation income streams.

How many veterans are affected?

- The decision applies to the invalidity benefits of around 14,150 veterans in the DFRDB and MSB schemes. Around 350 face higher end of year tax outcomes. The ATO expects these numbers to increase over time as veterans' circumstances change.

How much will this cost the Budget?

- The Government's approach was expected originally to have a cost to the underlying cash balance of $94.5 million over the forward estimates - as estimated at the 2021-22 MYEFO by the previous Government.

- In the 2021-22 MYEFO, the previous Government announced an approach with the following impact on the underling cash balance:

Impact on UCB ($ millions)	2020-21	2021-22	2022-23	2023-24	2024-25
Australian Taxation Office – Receipts	-	-15.0	-25.0	-10.0	-10.0
Related payments ($m)					
Australian Taxation Office	-	11.2	10.4	8.1	4.2
Department of the Treasury	-	0.3	0.2	-	-

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Total - Payments	-	11.5	10.7	8.1	4.2

- In the Pre-Election Fiscal and Economic Outlook, the previous government amended that approach, resulting in the following changes to the UCB:

Impact on UCB ($ millions)	2021-22	2022-23	2023-24	2024-25	2025-26
ATO - receipts	15.0	-15.0	0.0	0.0	0.0
Total	15.0	-15.0	0.0	0.0	0.0

- The Government has adopted the previous Government's approach as amended. However, as a result of the passage of time the following receipt estimates will now be reflected in the new Bill when it is introduced into Parliament. The table also reflects the changes in related payments.

Impact on UCB ($ millions)	2022-23	2023-24	2024-25	2025-26	**Total**
Australian Taxation Office – Receipts	-40.0	-10.0	-10.0	0.0	**-60.0**
Related payments ($m)					
Australian Taxation Office, Department of Treasury (departmental)	10.7	8.1	4.2	0.0	**23.0**
Department of Social Services (act of grace)	14.2	13.9	2.0	1.3	**31.4**
Total - Payments	24.9	22.0	6.2	1.3	**54.4**

- The payments also now include the effect of the October 2022-23 Budget measure that provided $31.4 million (including implementation costs) over the forward estimates period (and $1.1 million per year on an ongoing basis) to provide act of grace payments to address the retrospective impacts of the Douglas decision for child support customers.

Why were some taxpayers worse off because of the Douglas decision?

- The decision means the affected payments should be treated as superannuation lump sums instead of superannuation income streams for tax purposes.

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- Relevant factors that determine the tax treatment of benefits include the person's age, the nature of the benefit (e.g., disability or otherwise), the amount of the benefits, the tax components that make up the benefits and any taxation offsets that might apply to those components.
  - For example, for over 60s with lower value non-disability benefits, the loss of the 10% untaxed element income stream offset may result in a less favourable tax outcome.
  - Other taxpayers may find they use up all their low-rate caps that apply to lump sum benefits, and the taxation rates that apply thereafter are higher than the average rate applied to an income stream.

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Victims of Crime

KEY MESSAGE

- The Government considers that it is particularly egregious for convicted criminals to seek to hide assets in superannuation in order to avoid paying compensation to their victims. The Government recently met with the Grace Tame Foundation to discuss this issue and is considering how survivors can be better supported to receive their rightful compensation.

KEY FACTS AND FIGURES

- In June 2022, the Grace Tame Foundation, in partnership with Andrew Carpenter, Fighters Against Childhood Abuse Australia and the Carly Ryan Foundation, launched the *Super for Survivors* campaign.
- The *Super for Survivors* campaign, represented by the Grace Tame Foundation met with the Assistant Treasurer on 16 June 2022 to discuss victims' access to perpetrators' superannuation and presented a joint letter.
- Through the campaign, the Grace Tame Foundation are seeking legislative amendments to ensure that victims and survivors of child sexual abuse are able to access redress from the superannuation of perpetrators.

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Victims of Crime

BACKGROUND

Current avenues for victims of crime compensation

- There are three ways that a victim of crime can currently seek compensation from the perpetrator:
  - state and territory statutory compensation schemes (state-funded), where the state pays compensation directly to a victim of crime
  - compensation or restitution orders, handed down as part of the sentencing process in a criminal trial, requiring the perpetrator to pay the victim
  - a victim pursuing civil action against a perpetrator or alleged perpetrator for damages (either following their conviction or in the absence of a conviction).
- The perpetrator's superannuation is protected in each of these processes and may be used by perpetrators as a vehicle to avoid paying compensation to victims.
  - Bankruptcy proceedings may currently be used to 'claw-back' superannuation contributions made by a perpetrator to avoid paying debts, including victims' compensation orders.

Measure announced by previous Government

- The previous Government's measure, which was originally scheduled to commence on 1 July 2020 but did not proceed, included two mechanisms for victims of crime to access their perpetrator's superannuation:
  - the first was for a claw-back mechanism for 'out of character' superannuation contributions made by criminals to shield their assets from use in compensating victims of their crimes; and
  - the second was to allow victims of serious, violent crimes to be able to access a perpetrator's superannuation as compensation, where other assets have been exhausted, subject to appropriate limits and thresholds.
- These mechanisms were canvassed as part of a Treasury consultation paper released from 28 May to 15 June 2018. Treasury received 23 submissions in response to this consultation process, which are publicly available on the Treasury website. Treasury met bilaterally with a number of stakeholders, including representatives from most state and territory justice departments and/or victims of crime commissions, as well as a number of state and federal courts.

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Victims of Crime

- Prior to the Treasury consultation released between 28 May and 15 June 2018, Treasury released a consultation paper from 20 December 2017 to 12 February 2018, which included canvassing whether, and the circumstances in which, a perpetrator's superannuation assets should be available to pay compensation to victims of crime.
  - Treasury received over 60 submissions which are publicly available on the Treasury website, held 10 roundtables and met bilaterally with a number of stakeholders.

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PERFORMANCE TEST - FAITH BASED PRODUCTS AND TDP DEFERRAL

KEY MESSAGE

- The Albanese Government is committed to strengthening Australia's world-class superannuation system, which is why we have tasked Treasury to review whether the Your Future, Your Super (YFYS) laws have created unintended outcomes for members. We have also deferred the extension of the annual YFYS performance test beyond MySuper products for 12 months, and introduced legislation to adjust how faith-based products are treated under the test.

KEY FACTS AND FIGURES

- The annual YFYS performance test (the test) for superannuation products is a component of the YFYS reforms legislated in 2021. The test compares a product's returns and fees against benchmarks to determine if it passes (performing) or fails (underperforming).

2022 Performance Test Results

- The second annual performance test applied to 69 MySuper products in August 2022. This found that 5 products failed the test, representing 604,000 member accounts and nearly $28 billion in assets.
- Of the 5 products which failed:
  - 1 product, Westpac Group Plan MySuper failed the test for the first time.
  - 4 products had a second consecutive failure and are now closed to new members until they pass a subsequent performance test. These products are:
    - AMG MySuper;
    - BT Super MySuper;
    - Energy Industries Superannuation Scheme Balanced (MySuper);
    - ACS Super LifetimeOne (Australian Catholic Superannuation Retirement Fund).

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PERFORMANCE TEST - FAITH BASED PRODUCTS AND TDP DEFERRAL

- Since the inception of the performance test, 14 products have failed. Of these products:
  - 4 have already exited;
  - 5 have failed the 2021 performance test, and passed the 2022 performance test;
  - 4 failed both the 2021 and 2022 performance tests; and
  - 1 passed the 2021 performance test, and failed the 2022 performance test.
- The 4 products that failed the test two years in a row can longer accept new members until they pass a future performance test. This will ensure that superannuation members do not join underperforming products, setting them up for a better retirement.
- For the 5 products that failed the 2022 performance test, four funds have committed to exiting ahead of the 2023 performance test.

2021 Peformance Test Results

- The results of the first performance test were released in August 2021. 13 products failed out of the 76 products tested. Out of the 13 failed products, 1 has since closed, 9 have merged or are in the process of merging, and 3 are subject to increased supervision by APRA.

YFYS Review and deferral of test for trustee-directed products (TDPs)

- The Albanese Government is committed to ensuring that the performance test holds trustees to account for the investment performance they deliver and the fees that they charge to members.
- The Government is aware of concerns that the YFYS reforms have potentially created unintended consequences, such as discouraging certain investment decisions.

PERFORMANCE TEST - FAITH BASED PRODUCTS AND TDP DEFERRAL

- As such the Government tasked Treasury to review the operation of the YFYS reforms after the second round of the test for MySuper products took place in August 2022.
- As part of the review, Treasury recently undertook an extensive 6-week consultation process seeking stakeholder feedback into the YFYS measures. Submissions closed on 14 October 2022. Treasury is processing submissions and intends to provide advice to Government in the coming weeks.
- During the consultation process Treasury met with a range of stakeholders from across the superannuation sector through bilateral meetings, roundtable discussions, and a technical working group on the performance test. The Government announced the membership of the technical working group on 20 September 2022.

• The extension of the performance test to TDPs has been paused for 12 months to provide time for the review to take place. This will allow the Government to consider and consult on any changes to ensure that the test is fit for purpose given the significant variety and complexity of these products.

Faith-based products

• Currently, the performance benchmark can potentially penalise faith-based products for avoiding certain investments that fall outside their religious principles, for example, armaments. This could lead to these funds ultimately being closed to new members, denying Australians of faith the option of investing their super in line with their religious beliefs.

- Two notionally faith-based products have failed the performance test. Christian Super failed the performance test in 2021 and Australian Catholic failed in 2021 and 2022. These funds are currently progressing mergers with other better performing funds (Australian Ethical and UniSuper, respectively).

• The Government has now introduced legislation into Parliament to adjust how faith-based products are treated under the test.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
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Date of Update	01 November 2022		

PERFORMANCE TEST - FAITH BASED PRODUCTS AND TDP DEFERRAL

  - On 28 September, Treasury Laws Amendment (2022 Measures No. 3) Bill 2022 was referred to the Senate Economics Legislation Committee and the Senate Standing Committee for the Scrutiny of Bills. The report from the Senate Economics Legislation Committee is due by 17 November 2022.
  - On 27 October, Treasury Laws Amendment (2022 Measures No. 3) Bill 2022 passed the House of Representatives without amendment.

- The proposed legislation seeks to:
  - Require trustees to ‘self-identify’ and apply to APRA for faith-based product status;
  - Subject faith-based products to a supplementary test that considers their faith-based investment strategy, if they fail the original test; and
  - Exempt faith-based products from the consequences of failure if they pass the supplementary test.
- Exposure draft regulations to support this legislation have been released for public consultation. Draft regulations can be found on the Treasury website and consultation closed on 7 October 2022.
  - Treasury received 8 written submissions from a variety of stakeholders, the majority from industry peak bodies.
- These amendments are targeted squarely at the small number of faith-based superannuation funds that face the potential of being penalised for investing in accordance with their religious principles.
  - Members of faith-based products affected by the regulations represent around 1 per cent of total superannuation members.
  - The YFYS Review will provide an opportunity to assess the unintended consequences that the performance test benchmarks pose for other products.

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Division responsible	Retirement, Advice and Investment Division		
Date of Update	01 November 2022		

PERFORMANCE TEST - FAITH BASED PRODUCTS AND TDP DEFERRAL

BACKGROUND

YFYS reforms

- The YFYS reforms include the following elements:
  - **Annual performance test** — Holding funds accountable and protecting members by introducing an annual objective performance test. The test aims to protect members from poor outcomes by encouraging funds to lower fees and improve performance to boost Australians' retirement incomes.
  - **Stapling** — Changes to ensure that superannuation accounts follow members (stapling) when they change jobs. This stops the creation of unwanted multiple accounts that reduce retirement savings through duplicate fees.
  - **YourSuper comparison tool** — Empowering members to make better decisions about who manages their retirement savings by delivering the new, interactive, online YourSuper comparison tool.
  - **Best Financial Interests Duty** — Increasing trustee accountability by strengthening obligations to ensure trustees only act in the best financial interests of members and requiring superannuation funds to provide better information regarding how they manage and spend members' money in advance of Annual Members' Meetings.

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Division responsible	Retirement, Advice and Investment Division		
Date of Update	01 November 2022		

Education Requirements for Experienced Advisers

KEY MESSAGE

- The Albanese Government is committed to improving the overall professional qualification framework to attract talent back into the financial advice industry.
- The Government has engaged with industry over a four-week consultation on how best to implement the election commitment to remove tertiary education requirements for experienced advisers with a clean record, and how to streamline settings for new entrants.
- Consultation closed on 16 September 2022. The Government is now considering the feedback provided by industry.

KEY FACTS AND FIGURES

- As at 17 November 2022, there are 16,176 advisers currently registered on the Financial Advisers Register (FAR).
- As at 20 September 2022:
  - More than 92 per cent of candidates have passed the exam
  - 74 per cent of initially unsuccessful candidates ultimately passed at a re-sit
- From 1 October 2022, all financial advisers must have passed the exam to continue to provide personal advice to retail clients.
- The Government's recent consultation included 4 general industry roundtables and 3 roundtables with higher education specialists. Stakeholders that were engaged in this process included representatives from professional associations, licensees, and universities.
- There were more than 70 submissions on the consultation paper.

LABOR ACTION

- On 8 December 2021, the Hon. Stephen Jones MP undertook to remove the tertiary qualifiation requirement for financial advisers with 10 years' experience and a clean record.

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Division responsible	Retirement, Advice and Investment Division		
Date of Update	17 November 2022		

Education Requirements for Experienced Advisers

- Consultation on how best to implement the election commitment opened on 23 August 2022 and closed on 16 September 2022.
- The Government is now considering the feedback provided by industry in this consultation.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
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Division responsible	Retirement, Advice and Investment Division		
Date of Update	17 November 2022		

Education Requirements for Experienced Advisers

BACKGROUND

- In 2014, the Financial System Inquiry (Murray Report) and the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry made recommendations to improve the competence of financial advisers.
- The current framework is set out in the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*. There are different requirements for 'existing providers' – advisers registered on the Financial Advisers Register (FAR) between 2016 and 2019 – and 'new entrants' joining the industry from 2019.
- Since 1 January 2019, new entrants to the financial advice industry must:
  - Hold an approved qualification (bachelor's degree minimum)
  - Pass the financial adviser exam
  - Complete a professional year (PY)
  - Complete 40 hours of continuing professional development (CPD) annually
  - Comply with the Financial Planners and Advisers Code of Ethics 2019
- Since 1 January 2019, to continue to provide advice existing financial advisers must:
  - Complete at most an eight-unit graduate diploma, which can be reduced through recognition of prior learning, by 1 January 2026
  - Pass the financial adviser exam by 1 January 2022, or 1 October 2022 if eligible for the extension
  - Complete 40 hours of CPD annually
  - Comply with the Financial Planners and Advisers Code of Ethics 2019

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Division responsible	Retirement, Advice and Investment Division		
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Education Requirements for Experienced Advisers

- The number of advisers registered on the FAR has fluctuated in recent years:

2017	25,651
2018	25,705
2019	28,559
2020	23,984
2021	20,866
2022	17,825
All figures as at 1 January in each year.	

- The sharp peak in 2019 likely reflects an influx of advisers seeking to be registered on the FAR to be granted ‘existing provider’ status and retain access to favourable transitional arrangements. The subsequent decline in adviser numbers likely reflects that there were some advisers registered on the FAR who did not intend to provide advice to retail clients.

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Division responsible	Retirement, Advice and Investment Division		
Date of Update	17 November 2022		

Downsizer

KEY MESSAGE

- The Government has introduced legislation to expand eligibility for those who can make downsizer contributions to their superannuation to 55 years of age, in line with its election commitment.

KEY FACTS AND FIGURES

- The downsizer program allows eligible older people to make a one-off, post-tax contribution to their superannuation of up to $300,000 per person ($600,000 per couple) from the proceeds of selling their home, outside the usual superannuation contribution caps.

- From 1 July 2022, the eligibility age to make downsizer contributions has been reduced from 65 to 60.

- The Government is legislating its commitment to further expand eligibility to 55 years of age. The changes are included in the Treasury Laws Amendment (2022 Measures No. 2) Bill 2022 (Schedule 5). This further reduction in eligibility age will take effect from the first quarter following passage of legislation.

  – On 21 October 2022, the Australian Greens proposed an amendment in the Senate to the Treasury Laws Amendment (2022 Measures No. 2) Bill 2022 to omit the provisions relating to downsizer.

- The measure is estimated to decrease receipts by $20 million over the forward estimates.

- Since the start of the program, from 1 July 2018 to 30 September 2022, around 48,900 individuals have made downsizer contributions, of which around 77 per cent had superannuation balances of less than $600,000 and around 55 per cent were women. The average accumulated downsizer contribution per individual was around $245,800.

  – Around 59 per cent of those who have used the downsizer scheme have superannuation balances of $300,000 or less.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
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Division responsible	Retirement Advice and Investment Division		
Date of Update	16 November 2022		

Downsizer

BACKGROUND

- Downsizer contributions allow individuals who may otherwise be prevented from making contributions into their superannuation due to their age, work status or contribution cap restrictions to sell their home and make a contribution using the proceeds of the sale.
- The downsizer program provides flexiblity for older people to boost their superannuation savings for retirement. It is aimed at encouraging people to downsize earlier to homes that better meet their needs and free up the stock of larger homes for younger families.
- The Government is progressing this modest change to the eligibility age for the downsizer program in the context of a comprehensive plan to improve housing access and affordability and increase supply.
- Legislation requires an independent review of the operation of the First Home Super Saver Scheme (FHSSS) and downsizer scheme as soon as practicable after June 2019. The Government will consider the legislated review within the context of its broader priorities.
- On 29 September 2022 the Superannuation Legislation Amendment (Broadening Contribution Rules) Regulations 2022 were made. This allows superannuation funds and Retirement Savings Account institutions to accept downsizer contributions under the new eligilbity criteria.
  - These regulations are subject to the commencement of primary legislation.

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Division responsible	Retirement Advice and Investment Division		
Date of Update	16 November 2022		

WOMEN AND SUPERANNUATION

KEY MESSAGE

- The Government is committed to improving the economic security of women in retirement and reducing the superannuation savings gap.

KEY FACTS AND FIGURES

- In 2019-20, the median superannuation balance for males **approaching Age Pension age** (60-64) was $180,928 compared with $139,056 for females. This equates to a 23.1 per cent gap between the median male and female superannuation balance.
- In 2019-20, the median superannuation balance for males at or **approaching preservation age** (55-59 years) was $163,180 compared to $112,122 for females. This equates to a 31.3 per cent gap between the median male and female superannuation balance.
- The **gender pay gap** is a key driver of the difference in superannuation balances between men and women. According to the Workplace Gender Equality Agency (WGEA), the national gender pay gap is 14.1 per cent (as at May 2022).
- Another major driver is the **time women take out of the workforce** to undertake unpaid care work. Women are more likely than men to take time out of the workforce to care for children and this interrupts paid employment patterns resulting in lower earnings and lower superannuation contributions.
  - In 2019-20, among parents of children aged five and under, 65.5 per cent of women were in the labour force, compared to 94.4 per cent of men.
  - The labour force participation gap is the largest around childbearing ages where women aged 30-39 are almost three times more likely than men to be not in the labour force – 22 per cent of women were not in the labour force compared to only 8 per cent of men in 2019-20.
  - According to 2020-21 data from WGEA, women account for 88 per cent of all primary carer's leave utilised.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
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Division responsible	Retirement Advice and Investment Division		
Date of Update	20 October 2022		

WOMEN AND SUPERANNUATION

BACKGROUND

Removal of the $450 threshold

- After years of advocacy while in opposition, the Government welcomes the removal of the $450 per month income threshold under which employees do not have to be paid the superannuation guarantee by their employer, which commenced on 1 July 2022. This will improve equity in the superannuation system, in particular for women, who are most likely to be impacted by this threshold due to being more likely to work part-time, in lower-paid industries.
  - The Retirement Income Review estimated that of employees who were affected by the $450 per month threshold in July 2019, 63 per cent (around 200,000) were women. Removing the threshold will help women working a few hours in multiple jobs or balancing re-entering the workforce with caring responsibilities contribute to their retirement savings.

Increases to the superannuation guarantee rate

- The Government will help improve women's economic security in retirement by committing to the legislated SG increases to 12 per cent.
  - The Retirement Income Review found that under a 12 per cent SG rate, most people will either maintain or improve their standard of living in retirement compared to working life, and that a lower SG rate would lead to lower superannuation balances.

Superannuation guarantee and paid parental leave

- Unlike most other leave entitlements, employers are not required to pay the superannuation guarantee (SG) on paid parental leave (PPL). The SG is also not paid on government-funded Parental Leave Pay (PLP).
- The Government has not committed to any changes to pay superannuation on government-funded PPL schemes.
- Paying superannuation on PPL and PLP would improve equity in the superannuation system by reducing some of the impact of child-related career breaks on retirement incomes. It would also signal the value of unpaid care.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
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Division responsible	Retirement Advice and Investment Division		
Date of Update	20 October 2022		

WOMEN AND SUPERANNUATION

- According to the Retirement Income Review, for the median female earner, receiving superannuation on the average period of employer PPL (11 weeks in 2019) increases her balance at retirement by around 0.8 per cent. For the Government-funded PLP (18 weeks), the median female earner increases her balance by 0.17 per cent.

- The WGEA reported that in 2020-21, around 49 per cent of private employers pay superannuation to primary carers on parental leave.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
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Division responsible	Retirement Advice and Investment Division		
Date of Update	20 October 2022		

Future Leaders Fund

KEY MESSAGE

The Australian Future Leaders Foundation is a registered charity and is specifically listed in the tax law as a deductible gift recipient (DGR) following legislative amendments passed in March 2022.

KEY FACTS AND FIGURES

- AFLF was established and registered as a charity in April 2021. Its purpose is to advance education, with a focus on building the skills, experience and capability of Australia's future leaders.
- Australian Future Leaders Foundation (AFLF) was one of six entities specifically listed in the tax law in the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022*.
- The decision on which entities to include in a bill for specific listing is a policy decision of the government of the day.

Office Responsible	Assistant Minister for Competition, Charities and Treasury - The Hon Dr Andrew Leigh MP	**Adviser**	s 22
Contact Officer	s 22	**Contact Number**	s 22
Division responsible	Personal and Indirect Tax Charities and Housing		
Date of Update	02 November 2022		

Future Leaders Fund

BACKGROUND

- Entities endorsed as DGRs are entitled to receive gifts which are deductible from the donor's income tax. DGR status helps entities attract public financial support for their activities. In order to receive DGR status, an entity must fall within one of the over 50 general categories set out in the tax law, or be specifically listed by name in the tax law.
- Specific listing is a policy decision of government. There are no strict application requirements or criteria set out in legislation. The Treasury website includes guidance on information that should be provided in support of a request for specific listing.
- AFLF made a proposal for DGR specific listing on 27 April 2021. Treasury's consideration of AFLF's application was routine. This included requesting estimates of donations expected to be received, a copy of the foundation's constitution, and information on the outcome of its registration process with the Australian Charities and Not-for-profits Commission.
- The specific listing of AFLF was announced in the 2021-22 MYEFO on 16 December 2021 in the measure *Philanthropy – updates to the list of specifically listed deductible gift recipients*. The listing of AFLF was included in the next appropriate legislative vehicle.
- The *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022* was introduced and passed on 30 March 2022, receiving Royal Assent on 31 March 2022.
- This provided Australian Future Leaders Foundation Limited with DGR status, in perpetuity, as of 1 July 2021.
- The 2022-23 Budget contained the *Australian Future Leaders Program* measure. Budget Paper 2 stated that $18 million would be provided over five years from 2021-22 and $4.0 million per year ongoing to establish the Australian Future Leaders Program. Funding for this is included in the Prime Minister and Cabinet portfolio.
- On 8 September 2022, the Treasurer stated that the Government will ***not proceed*** with the grant.

Office Responsible	Assistant Minister for Competition, Charities and Treasury - The Hon Dr Andrew Leigh MP	**Adviser**	s 22
Contact Officer	s 22	**Contact Number**	s 22
Division responsible	Personal and Indirect Tax Charities and Housing		
Date of Update	02 November 2022		

INSPECTOR-GENERAL OF TAXATION AND TAXATION OMBUDSMAN ANNUAL REPORT

KEY MESSAGES

- The 2020-21 Inspector General of Taxation and Taxation Ombudsman (IGTO) Annual Report was provided to the former Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing on 11 October 2021 but it was not approved for tabling. The Government has moved to table the annual report as soon as we were advised it was outstanding.

- The IGTO's 2020-21 Annual Report includes disclosures of potential debts to the Commonwealth relating to remuneration increases made to two senior executives which were not properly documented and inconsistent with the SES instruments and terms of appointment.

- As the accountable authority, the IGTO is responsible for ensuring appropriate steps are being taken in line with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and *Public Service Act 1999*.

- The IGTO has assured me she is taking the necessary steps in relation to recovery of Commonwealth debts, and has put safeguards in place to reduce the risk of unauthorised payments in the future.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
Contact Officer	Jacky Rowbotham	**Contact Number**	(02) 6263 3350
Division responsible	Personal and Indirect Tax, Charities and Housing		
Date of Update	23 September 2022		

INSPECTOR-GENERAL OF TAXATION AND TAXATION OMBUDSMAN ANNUAL REPORT

BACKGROUND

- The Inspector General of Taxation and Taxation Ombudsman (IGTO), Ms Karen Payne, provided the IGTO's 2020-21 Annual Report to the responsible Minister, the former Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing, on 11 October 2021, in line with her legislative obligations.
- The former Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing did not approve the report for tabling.

Unauthorised remuneration increases

- The IGTO has received advice that the January 2019 senior executive remuneration increases for two IGTO senior executives (SES) were not supported by valid section 24(1) determinations made under the *Public Service Act 1999* (PS Act). As such the senior executive pay increases were invalid and therefore may give rise to Commonwealth debts.
- Further enquiries conducted by the IGTO identified that valid determinations were not executed by the previous holders of the office of IGTO dating back to 2009.
- Further, the IGTO identified that the January 2019 increases involved an actual or perceived conflict of interest relating to the Acting IGTO approving SES remuneration increases for his own substantive position.

Debt Recovery

- The Commonwealth debts against each of the senior executives are significant and the impacted senior executives either have made an application or have indicated in writing their intention to request a waiver of their debts by either the Department of Finance or the Minister for Finance, as relevant. This is an extensive process that can take more than 12 months to finalise.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
Contact Officer	Jacky Rowbotham	**Contact Number**	(02) 6263 3350
Division responsible	Personal and Indirect Tax, Charities and Housing		
Date of Update	23 September 2022		

INSPECTOR-GENERAL OF TAXATION AND TAXATION OMBUDSMAN ANNUAL REPORT

Implementation of Appropriate Systems of Internal Control

- The IGTO has taken action to reduce the risk of future unauthorised payments including:
  - executing valid section 24(1) determinations to support future SES remuneration increases, effective as 30 June 2021;
  - recruiting a new human resource manager to oversee the IGTO payroll function and transitioned to an independent payroll service provider;
  - revising and authorising human resource delegations, policies and procedures relating to the payment of senior executive remuneration and associated pay increases.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
Contact Officer	Jacky Rowbotham	**Contact Number**	(02) 6263 3350
Division responsible	Personal and Indirect Tax, Charities and Housing		
Date of Update	23 September 2022		

Data Security and Charities – Smith Family cyberattack

KEY MESSAGE

- The Smith Family has become the latest major Australian organisation to fall victim to a cyberattack, with media reports that hackers have gained access to its donors' confidential information including credit card details.
- Charities hold sensitive information about their beneficiaries, employees, volunteers and donors, so it is important that a charity's responsible people are aware of the risks of their data collection, storage and use practices.

KEY FACTS AND FIGURES

- Under the Privacy Act, organisations have obligations to protect against unauthorised access, disclosure or loss of personal information. The Office of the Australian Information Commissioner is responsible for enforcing data breach laws.
- The *Australian Charities and Not-for-profits Commission Act 2012* imposes governance standards on registered charities, which includes Governance Standard 5 regarding the duties of a charity's Responsible People (including its board or committee). This standard requires a charity to ensure its Responsible People act with reasonable care and diligence and that they act honestly and fairly and in the best interests of the charity for its charitable purposes. This includes when setting policies and processes for managing people's information and data.
- The Australian Charities and Not for Profits Commission (ACNC), as the regulator for the charities sector, provides guidance for charities about collecting, storing and using the information and data they hold about people in a responsible way, as well as a broad overview of responsibilities and the laws that may apply.
  - A charity should be transparent about the purposes for which it is collecting a person's information and data, and should be careful to only collect, store or use the information and data for those purposes. Further, it should also ensure the person from whom the information and data is being collected has given the appropriate consent.

Office Responsible	Assistant Minister for Competition, Charities and Treasury - The Hon Dr Andrew Leigh MP	**Adviser**	Nick Terrell
Contact Officer	s 22	**Contact Number**	s 22
Division responsible	Not For Profit and Tax Admin Branch		
Date of Update	23 November 2022		

Data Security and Charities – Smith Family cyberattack

BACKGROUND

- It is common for charities to collect data, ranging from names, addresses, and credit card details (for donors) to more detailed information such as data contained in health or education records.
- A charity should be transparent about the information and data that it collects, stores and uses. It should be open about its practices and be prepared to answer questions from donors, members, supporters and the public about the way it manages people's information and data.
- In addition to legal requirements surrounding data collection, storage and use, there are community expectations about the way a charity manages the information and data of its donors, supporters, staff and volunteers, and the people it helps. Meeting these expectations is crucial for protecting a charity's reputation and public support for its work.
- In addition to compliance with the relevant laws and governance standards, the ACNC provides a non-exhaustive list of recommended actions that charities can adopt to assist with the management of information and data, including things such as, implementing a clear policy and processes for managing people's information and data, ensuring all staff and volunteers understand the charity's policies and are properly trained and if using an external provider to manage information and data, ensure its policies and practices meet legal requirements and the expectations of the charity and the community.

Office Responsible	Assistant Minister for Competition, Charities and Treasury - The Hon Dr Andrew Leigh MP	**Adviser**	Nick Terrell
Contact Officer	s 22	**Contact Number**	s 22
Division responsible	Not For Profit and Tax Admin Branch		
Date of Update	23 November 2022		

NEW SOVEREIGN – CHANGES TO AUSTRALIAN CURRENCY

KEY MESSAGE

- The Government is focused on ensuring a smooth transition from the effigy of Queen Elizabeth II to that of King Charles III on Australian coins. Existing currency remains in circulation and remains legal tender.

KEY FACTS AND FIGURES

- The process for changing the image of the Sovereign on Australian coins (known as an effigy) and the portrait on the $5 note is different; however, both will take time.
  - The responsible Treasury-portfolio Minister, Assistant Minister Leigh, determines the design of Australian coins under the *Currency Act 1965*, whereas banknote design is the responsibility of the Governor of the Reserve Bank of Australia (RBA).
- The reigning Sovereign appears on Australian coins by convention.
  - Assistant Minister Leigh has indicated that Australia will continue this tradition (13 September 2022 interview with Patricia Karvelas, *ABC RN Breakfast*).
  - No change is required to existing law to move from using the late Queen's effigy to using the King's effigy on coins.
- The new effigy of King Charles III is expected to be put into production on Australia's coins over the course of 2023.
  - Once an effigy, approved by Buckingham Palace, is received, tooling and prototype testing will need to be undertaken by the Mints. The testing and production phase could take up to 12 months.
  - New coin designs will need to be 'determined' by Assistant Minister Leigh through the usual currency determination process under the *Currency Act 1965* before production of coins with the new effigy design commences.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
Contact Officer	s 22	**Contact Number**	s 22
Division responsible	Market Conduct Division		
Date of Update	19 October 2022		

NEW SOVEREIGN – CHANGES TO AUSTRALIAN CURRENCY

- The design of Australian banknotes and the process for periodic updates to the designs are matters for the RBA. The RBA has indicated that ‘there will be no immediate change to Australian banknotes’ resulting from the change of Sovereign (RBA media release, 9 September 2022).
  - Since decimalisation, the $1 note featured the Queen until it was replaced by the $1 coin in 1984. The $5 note has featured the Queen since the introduction of polymer notes in 1992.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
Contact Officer	s 22	**Contact Number**	s 22
Division responsible	Market Conduct Division		
Date of Update	19 October 2022		

NEW SOVEREIGN – CHANGES TO AUSTRALIAN CURRENCY

BACKGROUND

Coins

- There are two Mints which produce Australian legal tender coins. Both Mints will transition to using the King's effigy on the coins they produce.
  - The Royal Australian Mint (part of the Treasury-portfolio) produces all of Australia's circulating coinage, as well as a range of collector and investment coins.
  - The Perth Mint (which is wholly owned by the Western Australian Government and produces legal tender coins under an agreement with the Commonwealth) produces collector and investment coins only.
- The effigy of Queen Elizabeth II has appeared on Australian coins since 1953, including on our decimal currency since its introduction in 1966.
  - The current effigy, designed by Jody Clark, is the sixth of Queen Elizabeth II to appear on Australian coins, and was introduced on Australian coins in 2019.
- As the transition to the King's effigy may take some time, coins bearing the Queen's effigy will continue to be minted.
  - The CEO of the Royal Australian Mint, Mr Leigh Gordon, stated that no circulating coins will be produced which bear a 2023 year date and feature the effigy of Queen Elizabeth II (13 September 2022 press conference with Assistant Minister Dr Andrew Leigh). Until the King's effigy is available, circulating coins will continue to be dated 2022.
- There are 2023-dated collector and investment coins already available in the market featuring the Queen's effigy. They have been released from September, as is standard practice in the international numismatics (coin collecting) industry.
- Existing Australian coins will not be actively withdrawn from circulation. Coins featuring the effigy of either Sovereign will co-mingle in circulation.

Office Responsible	Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP	**Adviser**	s 22
Contact Officer	s 22	**Contact Number**	s 22
Division responsible	Market Conduct Division		
Date of Update	19 October 2022		

NEW SOVEREIGN – CHANGES TO AUSTRALIAN CURRENCY

   - Circulating coins typically last for about 30 years. There will be a gradual decline in the volume of coins in circulation featuring the Queen's effigy over time.

- There are currently no plans to phase out any denomination of coin.

- There will be no material change to the dimensions of circulating coins. The use of coin machines will not be affected.

Banknotes

- Commemorative banknotes are not issued for the collector market and banknotes are not subject to the Currency Determination process under the *Currency Act 1965*. Instead, the design of banknotes is the responsibility of the RBA Governor under section 34 of the *Reserve Bank of Australia Act 1959*.

- The RBA indicated (in its 9 September media release) that it will provide further updates in relation to a change of portrait on the $5 note in due course.

- The current $5 note design was the result of an RBA decision to improve its security features while retaining many key elements of the previous design. This was announced in September 2012.

   - Development of this design was handled by the RBA, Note Printing Australia Limited, and a Design Advisory Panel, consisting of subject matter experts on ornithology, acacia, portrait subjects and Australian history.

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FUNDRAISING REFORM

KEY MESSAGE

- The Government is working with the states and territories to fix Australia's outdated fundraising laws.

KEY FACTS AND FIGURES

- In late 2021, the Council on Federal Financial Relations (CFFR) agreed to develop a national fundraising framework.
  - This will reduce the red tape associated with differing state and territory fundraising conduct obligations, whilst retaining existing consumer safeguards to maintain public confidence.
  - A working group of officials from all jurisdictions, co-chaired by Commonwealth Treasury and the Victorian Department of Justice and Community Safety, is working to develop the framework.
  - This includes national principles for fundraising conduct, informed by targeted consultations with key stakeholders undertaken in early 2022.
- On 9 September 2022, Commonwealth, state and territory consumer ministers affirmed their support for fundraising conduct reform.
- On 7 October 2022, the Assistant Minister for Competition, Charities and Treasury, the Hon Dr Andrew Leigh MP, issued a joint statement with the Victorian Minister for Consumer Affairs, the Hon Melissa Horne, providing an update on this work.
  - The update notes the working group is finalising the framework for CFFR to agree and release in late 2022, pending the agreement of jurisdictions.

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FUNDRAISING REFORM

BACKGROUND

- Charitable and other fundraisers must comply with different conduct requirements in each state and territory (excluding the Northern Territory which does not regulate fundraising). These rules govern matters like when and where a fundraiser can seek donations, and what must be disclosed to a potential donor. Many of these rules pre-date the growth of online fundraising, are inconsistent and impose a heavy compliance burden.

- Fundraising regulation is a state and territory responsibility. In light of this, the Fundraising Working Group has focused on a state-led approach to reform, with the Commonwealth playing a facilitative role. Fundraising stakeholders are supportive of this approach. The Working Group’s proposed reform involves each state and the ACT replacing its existing fundraising conduct rules with agreed national fundraising conduct principles. These are intended to apply across all types of charitable fundraising activities, including online fundraising.

- The principles would be adopted by the states and territories in their own legislation or regulations – no Commonwealth legislation would be required. The principles would be enforced by state and territory regulators, which is consistent with the current arrangements whereby the states regulate fundraising.

- Jurisdictions are working towards consideration of the principles by the Council on Federal Financial Relations (CFFR) in late 2022.

Natural disasters

- The 2020 Royal Commission into National Natural Disaster Arrangements noted current fundraising regulations burden charities providing crucial services in response to natural disasters, and recommended Australian, state and territory governments create a single national scheme for the regulation of charitable fundraising. Implementation of the Royal Commission recommendations is the responsibility of emergency management ministers.

Earlier work on a cross-border recognition model

- CFFR also agreed in December 2020 to implement a cross-border recognition model for charitable fundraisers to ease the registration and reporting burden in multiple jurisdictions.

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FUNDRAISING REFORM

- Under the model, a charity already registered with the Australian Charities and Not-for-profits Commission (ACNC) will be deemed to hold a local authority in each participating jurisdiction.
- Jurisdictions are currently implementing the model.

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CONSUMER AFFAIRS

KEY MESSAGE

- The Government is committed to ensuring strong protections for Australian consumers.

KEY FACTS AND FIGURES

- Strong consumer laws don't just protect consumers – they promote competition, increased productivity and innovation.
- The Government is working collaboratively with the states and territories in this important area and demonstrating the national leadership that is required.
- Legislation to strengthen unfair contract terms (UCT) protections passed the Parliament on 27 October 2022, as Schedule 2 to the Treasury Laws Amendment (More Competition, Better Prices) Bill 2022.
  - The amendments introduce a civil penalty regime prohibiting the use of and reliance on UCTs in standard form contracts. The amendments also expand the class of contracts that are covered by the UCT provisions.
- The Government is also increasing penalties for breaches of competition and consumer law to deter conduct that stifles competition and increases costs to consumers. This also forms part of the More Competition, Better Prices Bill.
  - Maximum penalties for corporations will increase from $10 million to $50 million per breach and from 10 per cent of annual turnover to 30 per cent of turnover for the period the breach took place.
- At the meeting of Consumer Ministers in September 2022, Commonwealth, State and Territory Ministers discussed and agreed on priorities, which include:
  - improved capability and collaboration to combat scams
  - considering reforms to consumer guarantees and supplier indemnification provisions
  - consulting on proposed reforms to address unfair trading practices
  - releasing a discussion paper on travel services to inform ACL learnings across all service sectors following COVID-19.

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CONSUMER AFFAIRS

- The Government is also progressing reforms to the ACL to better recognise overseas product safety standards.
- The Government has appointed an experienced consumer advocate, Ms Catriona Lowe, to be a Deputy Chairperson of the Australian Competition and Consumer Commission for a five-year period starting on 27 January 2023.

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CONSUMER AFFAIRS

BACKGROUND

- The Australian Consumer Law (ACL) commenced in 2011. It provides a single consumer protection law operating as a law of the Commonwealth and of each state and territory. It includes:
  - general protections that create and promote standards of conduct in trade or commerce across the economy, including prohibitions against misleading or deceptive conduct, unconscionable conduct and the use of unfair contract terms; and
  - specific protections against certain unfair practices including false or misleading representations, consumer guarantees and product safety provisions.
- The Government made election commitments to:
  - introduce a set of measures to combat scams and online fraud, including establishing a National Anti-Scam Centre
  - make unfair contract terms illegal so small businesses can negotiate fairer agreements with large partners
  - increase penalties in the *Competition and Consumer Act 2010*
  - establish a ‘Super Complaint’ function within the Australian Competition and Consumer Commission (ACCC)

Scams – election commitment

- The Government has committed to introducing a range of measures to combat scams, including:
  - establishing a National Anti-Scam Centre (based on the UK’s Fusion Cell model)
  - new industry codes (including for banks, telecommunications providers and digital platforms)
  - more funding for identification recovery services
  - a review of penalties

CONSUMER AFFAIRS

- These measures are intended to strengthen the system to better protect consumers, families and small businesses.
- Delivering on this election commitment will require a comprehensive, whole-of-government response.
- Treasury has commenced work with other departments and regulators. Stakeholder roundtables are expected to be held this year.

Scams – statistics

- Scams remain a key consumer concern for the public. So far in 2022, the ACCC's Scamwatch service has received 166,047 reports with more than $425 million in financial losses.
- According to the ACCC, Australians lost over $2 billion to scams in 2021.
- On 4 July 2022, the ACCC released its 'Targeting Scams' report on key trends in scam activity. The data in this report is for the 2021 calendar year.
  - The ACCC received 286,622 scam reports in 2021, with reported losses of $324 million. Reports increased by 33 percent compared to 2020, and financial losses increased by 84 percent.
  - The highest losses reported to all agencies and banks were for investment scams.
  - Scamwatch sent more than 150 disseminations of scam reports on high risk or current scam trends to law enforcement and government agencies. This intelligence assisted state and federal police to investigate and, in some instances, prosecute scammers.
  - Scamwatch shared thousands of telephone numbers provided in scam reports with the telcos and the Australian Communications and Media Authority (ACMA) every week, to assist them to identify scam call traffic and disrupt scammers.
- Consumers concerned about scams should visit the ACCC's website www.scamwatch.gov.au to keep up to date with current scams, report scam activity, and get information about what to do if they become a scam victim.

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- The Scamwatch website receives thousands of reports each year. The ACCC uses this information to help consumers recognise and avoid scams. The ACCC focuses on education and collaboration as the online and global nature of scams makes it difficult to prosecute scammers and ultimately recover money lost to scams.

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LITIGATION FUNDING

KEY MESSAGE

- The Government will reinstate exemptions from the Australian Financial Services Licence (AFSL) and Managed Investment Scheme (MIS) regimes for litigation funders to improve litigation funders' ability to facilitate access to justice for claimants.

KEY FACTS AND FIGURES

- Third-party litigation funders play a critical role in providing a service that facilitates access to the courts to enable claimants to seek redress, particularly in the class action system.
- Since August 2020 litigation funding schemes used in class actions (and involving a third-party litigation funder) have been required to be registered as a MIS and hold an AFSL. The Government will progress regulations to reinstate the exemptions from these regimes that existed prior to the August 2020 changes.
- A recent Federal Court decision found that litigation funding schemes relating to a class action do not satisfy the legislative definition of a MIS.
- In its 2018 final report on *Integrity, Fairness and Efficiency – An Inquiry into Class Action Proceedings and Third-Party Litigation Funders*, the Australian Law Reform Commission (ALRC) considered but did not recommend the regulation of litigation funders through the AFSL regime (or another form of licensing).
  - Court oversight of third-party litigation funders was recommended by the ALRC as a better solution to ensure appropriate and effective consumer protection.
- The Government has released for consultation the draft *Corporations Amendment (Litigation Funding) Regulations 2022* (draft Regulations).
  - A four-week consultation on these draft Regulations and the accompanying Explanatory Statement took place from 2 September to 30 September 2022.
  - The Government is now considering the submissions received.

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LITIGATION FUNDING

BACKGROUND

- The Full Court's 2009 decision in *Brookfield Multiplex Ltd v International Litigation Funding Partners Pte Ltd* (2009) 180 FCR 11 (Brookfield) held that the litigation funding scheme in that case constituted a Managed Investment Scheme (MIS) for the purpose of the *Corporations Act 2001*.
  - Entities dealing in a MIS are required to hold an Australian Financial Services Licence (AFSL).
- Exemptions from the MIS and AFSL regimes were introduced following the Brookfield decision by subordinate legislation.
- On 22 May 2020, the former Treasurer announced the then Government would remove these exemptions so that litigation funders would have to comply with the MIS and AFSL regimes. The announcement specified the changes would take effect from three months from the date of the announcement.
- The Corporations Amendment (Litigation Funding) Regulations 2020 were registered on 23 July 2020 and came into effect on 22 August 2020.
  - The 2020 Regulations resulted in litigation funding schemes used in class actions (and involving a third-party litigation funder) being required to comply with the MIS and AFSL regimes.
- On 25 November 2021, the former Government introduced a new AFSL condition which has the effect of preventing legal representatives of class action claimants from having or obtaining a material financial interest in the litigation funder for the action.
  - The additional requirement strengthens protections against conflicts of interest which may arise when plaintiff lawyers have material financial interests in funders.
- On 16 June 2022, the Federal Court handed down its decision in *LCM Funding Pty Ltd v Stanwell Corporation Limited* [2022] FCAFC 103 (the LCM decision) that a litigation funding scheme relating to a class action did not satisfy the definition of a MIS and that the *Brookfield* case was wrongly decided.

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LITIGATION FUNDING

  - The court noted that many MIS provisions under Chapter 5C of the *Corporations Act 2001* are incapable of application or impossible for a typical litigation funding scheme to comply with.
  - The decision means that class action litigation funding schemes will no longer be required to comply with the MIS regime in the *Corporations Act 2001*.
- The requirement for litigation funders to obtain an AFSL on the basis that an interest in a litigation funding scheme is a financial product still remains in effect, along with related obligations to comply with the anti-hawking provisions and product disclosure requirements of the Corporations Act.

Previous inquiries into class action litigation funding

- The ALRC's final report on *Integrity, Fairness and Efficiency – An Inquiry into Class Action Proceedings and Third-Party Litigation Funders* was provided to the then Government in December 2018, and tabled in Parliament on 24 January 2019.
  - The ALRC understood its inquiry to require consideration of two overarching issues: the integrity of third party funded class actions, and the efficacy of the class action system.
  - The ALRC recognised the wide and evolving range of funding models in the third-party litigation funding market. It examined the case for establishing a licensing regime similar to the AFSL for litigation funders, but ultimately recommended a court-based approach to the oversight of litigation funding agreements and reducing financial risks to consumers.
- In its 2020 inquiry into litigation funding and the regulation of the class action industry, the Coalition-led Parliamentary Joint Committee on Corporations and Financial Services supported the regulation of litigation funding through the AFSL and MIS regimes, and further recommended legislation of a fit-for-purpose MIS regime tailored for litigation funders.

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MOTOR VEHICLE SERVICE AND REPAIR SCHEME

KEY MESSAGE

- The Government launched the Motor Vehicle Service and Repair Information Sharing Scheme (the Scheme) on 1 July 2022.
- The Scheme increases competition and choice for consumers about where they have their cars serviced and repaired.
- By giving drivers more freedom and choice, the Government is delivering better value for Australian consumers by reducing the cost of owning and maintaining a car.

KEY FACTS AND FIGURES

- Motor vehicle servicing and repair is a $23 billion industry in Australia that keeps 19.8 million vehicles on the road, supporting over 23,000 independent repairers.
- New cars are computers on wheels. Real-time access to information such as digital files and codes vary from car to car and are needed to complete many aspects of a repair or service.
- In the past, only car manufacturers and their affiliated repairers were able to access important service and repair information. This prevented many independent repairers from competing fairly for car servicing and repair work and created inconvenience and delays for consumers.
- The new scheme, which is found in Part IVE to the *Competition and Consumer Act 2010,* requires motor vehicle service and repair information to be made available to Australian repairers and registered training organisations (RTOs) to purchase at a fair market price. The Scheme applies to passenger vehicles and light goods vehicles, manufactured on or after 1 January 2002.
- Under the mandatory scheme, all Australian motor vehicle repairers and relevant RTOs have fair access to the information needed to service and repair cars or provide training. This includes software updates and codes for computerised systems from a car manufacturer.

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MOTOR VEHICLE SERVICE AND REPAIR SCHEME

- The Government has worked closely with industry to develop the Scheme and has appointed a joint industry-led organisation, the Automotive Service and Repair Authority Limited (AASRA) to the statutory role of Scheme Adviser. As Adviser, AASRA will work with the Government and the Australian Competition and Consumer Commission (ACCC) to ensure the Scheme's success.
- The ACCC will enforce the Scheme and has power to take action, including issuing infringement notices and court proceedings where systemic breaches of the Scheme occur.

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MOTOR VEHICLE SERVICE AND REPAIR SCHEME

BACKGROUND

- In 2017, the ACCC's New Car Retailing Market Study found that a lack of access to motor vehicle service and repair information is causing delays and detriment to consumers. This study involved 18 months of investigation and consultation, with over 130 public submissions made and site visits, stakeholder forums and round tables held.

- The Inquiry found that the repair and service of new cars is increasingly reliant on access to electronic information and data produced by car manufacturers. Independent repairers, who are not authorised or affiliated with manufacturers, are reliant on manufacturers voluntarily sharing information and data.

- Following the release of the ACCC's Inquiry, in 2018 the Labor Party announced its 'Your Car, Your Choice' policy. The policy was designed to support independent mechanics, who were increasingly finding that they could not access the information they needed from manufacturers to fix modern cars, by mandating access to service and repair information from car manufacturers.

- The Scheme received royal assent in June 2021. Scheme rules to prescribe technical details about the Scheme, such as access requirements for safety and security information, were published in October 2021.

- Treasury consulted extensively with industry and across Government to develop technical aspects of the Scheme's design and to ensure it is effective, fair, and safe.

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MOTOR VEHICLE SERVICE AND REPAIR SCHEME

Industry Engagement and Implementation

- AASRA was registered as a company limited by guarantee in November 2021. It is an industry-based private sector entity and will undertake many functions to support the Scheme's operation.
  - AASRA is made up of four industry organisations: the Australian Automotive Aftermarket Association, Australian Automotive Dealer Association, Federal Chamber of Automotive Industries and Motor Trades Association of Australia.
  - The Australian Automotive Association was involved in AASRA's establishment but opted against board membership and instead will be closely involved.
- In its capacity as Scheme Adviser, AASRA will undertake key functions including appointing facilitators to mediate disputes in relation to the Scheme, publishing information regarding the cost of scheme information and working with the Government and the ACCC to ensure the Scheme's success.
- Separately, AASRA has developed an online information sharing portal, run entirely by industry for industry, that facilitates easy access to and supply of scheme information. The portal provides a central source for repairers and RTOs to access information and for vehicle manufacturers (data providers) to meet their compliance obligations set out in the legislation.
  - AASRA received a one-off $250,000 grant in March 2022 to support delivery of online resources to facilitate the sharing of motor vehicle service and repair information, including associated organisational costs.
- The Scheme legislation does not require participants to use the online portal and they may alternatively supply and receive scheme information through alternative means such as a car manufacturer's website.

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NEWS MEDIA AND DIGITAL PLATFORMS MANDATORY BARGAINING CODE

KEY MESSAGE

- The Government will consider the outcomes of the Treasury statutory review of the News Media and Digital Platforms Mandatory Bargaining Code in coming weeks.

KEY FACTS AND FIGURES

- The Code came into effect on 3 March 2021.
- To date, no digital platform has been designated under the Code.
- Since March 2021, Google and Meta have reached commercial agreements outside the Code with a combined total of over 30 large and small news businesses serving metropolitan and regional areas.
- However, some significant news businesses – particularly SBS and the Conversation – have only reached deals with Google, not Meta, and many smaller news businesses have not reached deals with either platform.
- Treasury commenced a statutory review of the Code in March 2022.

BACKGROUND

The Code

- The Code aims to address bargaining power imbalances between digital platforms and news businesses to ensure that news businesses are fairly remunerated for their content to sustain public interest journalism in Australia.
- The Code provides incentives for digital platforms and news businesses to reach commercial deals outside of the Code. If that is not possible, it provides a framework for good faith negotiations and mediation. Where agreement cannot be reached, it sets out an arbitration process to determine remuneration.

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NEWS MEDIA AND DIGITAL PLATFORMS MANDATORY BARGAINING CODE

- The Assistant Treasurer may designate a digital platform – making them subject to the Code – after considering whether there is a significant bargaining power imbalance between the platform and Australian news businesses; and whether the platform has made a significant contribution to the sustainability of news.
- News businesses may register with the Australian Communications and Media Authority (ACMA) if they satisfy tests relating to revenue, type of news content, having an Australian audience, and professional and editorial standards.
  - Registration enables news businesses to participate in the Code processes.
  - ACMA has registered over 30 news businesses under the Code to date.
- The Code also imposes obligations on designated digital platforms on matters such as providing advance notice when they make major algorithm changes.

Review of the Code

- The Code legislation requires a review of its operation within 12 months.
- Terms of reference were released on 28 February 2022.
- Treasury is undertaking the review in consultation with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, the Australian Competition and Consumer Commission and ACMA.
- Treasury will provide the review report to the Assistant Treasurer and the Minister for Communications. The report must be published 28 days later.
- The review is focusing on: deals between news businesses and digital platforms; and the Code's provisions for designating digital platforms and registering news businesses.
- A consultation paper was released in April. Thirty-four written submissions were received in response. Stakeholder meetings were held in July and August.

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Food and Grocery Code

KEY MESSAGE

- The Government is committed to working with the grocery sector to ensure that the Food and Grocery Code continues to provide the right regulatory support to foster a competitive and sustainable industry.

KEY FACTS AND FIGURES

- The Food and Grocery Code (the Code) is a voluntary code prescribed by regulation under the *Competition and Consumer Act 2010*. The four largest industry players – ALDI, Coles, Woolworths and Metcash (wholesaler) – which accounted for 80 per cent of market share in 2020-21, are signatories to the Code.
  - Any supplier (including food manufacturers and farmers) that supply directly to a Code signatory can benefit from the protections under the Code.
- In late 2018, Professor Graeme Samuel AC undertook an independent review of the Code. He found that while the Code had been effective in improving conduct in the industry, changes could be made to enhance its operation, particularly in relation to the dispute resolution provisions.
  - Almost all of Professor Samuel's recommendations were accepted and were implemented through amendments to the Code that commenced on 3 October 2020.
- On 3 August 2021, Mr Chris Leptos AO was appointed as the Grocery Code Independent Reviewer to oversee this dispute resolution process under the Code and help address problematic behaviours in the industry before they become systemic.

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Food and Grocery Code

- Recently the food and grocery sector has reported experiencing rising input costs, labour shortages and supply chain disruption as a result of the ongoing effects of COVID-19 and a range of domestic and international events. The Code sets limits on acceptable conduct during price rise negotiations to ensure good faith dealings between the parties – it does not regulate prices or force retailers or wholesalers to accept price increases (that would likely be passed on to consumers).
  - Suppliers that experience inappropriate conduct from the signatories' buying team are encouraged to contact the relevant Code Arbiter to raise a complaint or contact the Grocery Code Independent Reviewer for further advice on the matter.
- There are two separate upcoming reviews of the Code, the first review will consider the dispute resolution provisions (to commence by 3 October 2022) while the second review will consider the remaining Code provisions (to commence by 3 October 2023).

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Food and Grocery Code

BACKGROUND

- The Food and Grocery Code of Conduct (the Code) is a prescribed voluntary code under Part IVB of the *Competition and Consumer Act 2010*. It was introduced in 2015 to improve transparency and certainty in commercial dealings and provide an effective process for resolving disputes.
- There are currently four signatories to the Code:
  - ALDI (retailer) (signed up on 15 June 2015)
  - Coles Supermarkets Australia (retailer) (signed up on 1 July 2015)
  - Woolworths Limited (retailer) (signed up on 1 July 2015)
  - Metcash Food & Grocery Pty Ltd (wholesaler) (signed up on 30 September 2020)
- The Australian Competition and Consumer Commission (ACCC) is the regulator and can take enforcement action against the signatories for breaches of the Code.

The 2018-19 Samuel Review and the 2020 Code ammendments

- Professor Graeme Samuel AC undertook a review of the Code in 2018.
- Following public consultation, the former Government's response, released on 27 March 2019, accepted all recommendations except recommendation 7 (as the proposal for the ACCC to take a more collaborative approach in compliance could interfere with its primary enforcement role).
- On 3 October 2020, amendments to the Code commenced. The amendments include:
  - clarifying the good faith obligations
  - prohibiting retrospective variations to grocery supply agreements
  - setting limits on acceptable conduct to encourage streamlined price rise negotiations (commencing in three months to allow for system changes)

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Food and Grocery Code

- – enhancing dispute resolution processes available to suppliers by requiring signatories to appoint Code Arbiters with authority to resolve supplier complaints and issue compensation
- – providing a Government appointed Independent Reviewer to review complaints to ensure suppliers are afforded due process and work collaboratively with the industry to promote compliance with the Code.

New Code dispute resolution process

- As of 3 December 2020, all signatories appointed a Code Arbiter.
  - Woolworths: appointed Ms Helen McKenzie (lawyer)
  - Coles: appointed Mr Jeff Kennett
  - ALDI: appointed Ms Bronwyn Gallacher (lawyer at CCL Consultants Pty Ltd)
  - Metcash: appointed Mr Martin Shakinovsky and Ms Deborah Ziegler

Independent Reviewer – Mr Chris Leptos AO

- Treasury provides secretariat support to Mr Chris Leptos AO, in his role as the Grocery Code Independent Reviewer.
- In October 2021, the Independent Reviewer undertook the first annual survey of suppliers, retailers and wholesalers, as mandated under the Code and received over 450 responses. Key results were included in the Independent Reviewer's first annual report, released on 30 November 2021.
- The survey results indicated that the Code has had a positive impact on the commercial relationships between suppliers and the Code signatories, however the results also highlighted areas for further improvement by the major retailers, such as late payments and delisting practices.
- In June-July 2022, the Independent Reviewer secured a voluntary commitment from the signatories to allow informal complaints to be raised with Code Arbiters on a confidential basis, without the need to lodge a formal complaint.

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Food and Grocery Code

Future reviews of the Code

- The Code specifies that two reviews must be commenced, the first review by 3 October 2022 to review the operation of the dispute resolution provisions (Part 5 of the Code), and the second review must commence by 3 October 2023, to review the remaining provisions in the Code.
- There have been calls to make the Code mandatory and include civil penalties, including such recommendations in the:
  - ACCC perishable agricultural goods inquiry report (released 10 December 2020).
  - Inquiry in performance of Australia's dairy industry by the Senate Rural and Regional Affairs and Transport References Committee (released 18 March 2021).
- These issues may be revisited in the context of the upcoming reviews in 2022 and 2023.

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REGIONAL BANKING TASKFORCE

KEY MESSAGE

- The Albanese Government released the final report of the Regional Banking Taskforce on 30 September 2022.

KEY FACTS AND FIGURES

- The Taskforce was set up to examine the impact of bank branch closures on regional communities and identify possible solutions to maintain and improve banking services.
- The Taskforce found:
  - banks can do more to communicate with individuals and communities when closing a regional branch
  - alternatives such as Bank@Post can help maintain banking services
  - it is important to maintain access to cash and to have data to monitor and understand how people do their banking
  - people experiencing vulnerability face particular challenges and need to be supported in accessing banking services and
  - continuing to support digital connectivity and literacy will help regional customers have more banking options.
- The report's seven recommendations provide a way forward to help improve banking services in regional Australia.
- The recommendations cover:
  - reviewing and strengthening the ABA's branch closure protocol, and implementing branch closure impact assessments
  - promoting and supporting Bank@Post services and maintaining access to cash
  - improving support for regional consumers experiencing vulnerability
  - supporting digital connectivity and literacy in regional areas
  - reviewing the APRA's points of presence data collection to better understand how people do their banking.

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REGIONAL BANKING TASKFORCE

BACKGROUND

- The Taskforce was established on 22 October 2021 by the former government.
- The Taskforce brought together banks and other key stakeholders to work together with the government to examine trends in bank branch closures and how they affect regional communities and economies.
- The Taskforce members included senior representatives from:
  - banks - ANZ, Commonwealth Bank of Australia, National Australia Bank, Westpac Banking Corporation, Bendigo and Adelaide Bank, Bank of Queensland;
  - peak bodies - the Australian Banking Association, the Customer Owned Banking Association, the Council of Small Business Organisations Australia, the Australian Chamber of Commerce and Industry;
  - Australia Post; and
  - the Australian Local Government Association.
- According to Australian Prudential Regulation Authority (APRA) Points of Presence statistics, the number of branches in regional and remote Australia fell by 677 (29 per cent) from June 2017 to June 2022.

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ASIC'S INDUSTRY FUNDING MODEL (IFM)

KEY MESSAGE

- The Government is committed to ensuring that ASIC, and the frameworks it uses are fiscally sustainableand appropriate for today's financial sector. The Government is committed to maintaining appropriate industry funding arrangements for ASIC and is currently reviewing the ASIC IFM.

KEY FACTS AND FIGURES

- ASIC's IFM aims to recover ASIC's regulatory costs from entities in the industry sub-sectors that cause the need for regulatory effort by ASIC, rather than recovering these costs from general taxpayers.
- The IFM comprises of industry levies charged annually to entities across 52 industry sub-sectors, as well as fees-for-service.
- Since the IFM was implemented on 1 July 2017, 21 sub-sectors have seen their costs fall and 10 sub sectors have seen their costs remain broadly steady. The remaining 20 sub-sectors have faced increases as a result of ASIC dedicating greater resources to regulating those sectors.
- ASIC's total regulatory costs recovered through levies have increased since the commencement of the IFM. This is primarily due to the increase in funding provided to ASIC to regulate the financial sector, including to implement the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.
  - The increase in funding is supporting ASIC to strengthen and intensify its approach to approach to enforcement and take on expanded responsibilities to address misconduct. As a result, certain sectors have required greater supervision and surveillance and increased ASIC enforcement – leading to increased levies.
- Treasury is currently leading a review of the ASIC IFM to ensure its settings remain appropriate in the longer term. A Discussion Paper has been released for four-weeks consultation from 28 September to 28 October 2022.

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ASIC'S INDUSTRY FUNDING MODEL (IFM)

BACKGROUND

- ASIC's IFM commenced in 2017-18. It followed a recommendation by the Murray Financial System Inquiry that the Government introduce a cost recovery model for ASIC so as to ensure ASIC has adequate funding to deliver effectively on its mandate.
  - Prior to this, ASIC was primarily funded by taxpayers through government appropriations.
- Under ASIC's IFM, the costs of ASIC's regulatory activities are recovered across its regulated population, primarily through levies. There are 52 regulated sub-sectors on which levies are charged.
  - The costs are recovered in proportion to the regulatory costs incurred by ASIC on each regulated sub-sector. Those sub-sectors that create a higher need for regulation and supervision bear a higher proportion of ASIC's costs.
- ASIC's estimated apportionment of regulatory costs are consulted on each year in a draft Cost Recovery Implementation Statement (CRIS).
  - ASIC published its draft 2021-22 CRIS for consultation in June 2022. A final CRIS was published on 21 October 2022, which includes consideration of stakeholder feedback from the draft CRIS.
  - ASIC determines final levy amounts based on its actual costs, and will issue invoices in respect of 2021-22 to its regulated population between January and March 2023.

Review of the ASIC IFM (the Review)

- On 8 August 2022, the Government announced that Treasury (in consultation with ASIC, the Department of Finance and the Department of the Prime Minister and Cabinet) will review the ASIC IFM to ensure its settings remain appropriate in the longer term.
  - A Terms of Reference has been published to guide the Review.
- Governments' long-standing position is that cost recovery levies and fees attributable to regulated activity are considered as a funding mechanism prior to budget funding (that is, funding from general taxpayers).

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ASIC'S INDUSTRY FUNDING MODEL (IFM)

  - Any significant deviations from this principle would raise concerns about equity and fairness, and would not be aligned with the Government's priority for responsible budget repair.

  - The Government is committed to maintaining appropriate industry funding arrangements for ASIC.

- ASIC's role and regulatory remit, its performance and its independence to allocate resources to deliver on its mandate are not within the scope of the Review.

  - Additionally, the Review will not assess or make recommendations on the appropriate aggregate level of funding provided to ASIC.

- A Discussion Paper has been released for a four-week consultation period from 28 September to 28 October 2022.

- The Discussion Paper invites stakeholders to consider options, examples of potential changes and questions that are designed to examine and address a range of issues set out in the Review's Terms of Reference.

  - Stakeholder feedback received through this process will inform the Review's consideration, including whether any refinements are required to the IFM to ensure its settings remain appropriate.

Temporary levy relief for personal financial advice licensees

- Temporary levy relief has been provided to the personal financial advice licensee sub-sector for 2020-21 and 2021-22.

  - ASIC levies charged to personal financial advice licensees were restored to their 2018-19 level of $1,142 per adviser for 2020-21 and 2021-22. The flat per licensee charge remained at $1,500.

  - The temporary levy relief has resulted in the sub-sector paying $34.2 million less in ASIC levies in 2020-21 and an estimated $35.3 million less in ASIC levies for 2021-22.

- The Review will have regard to the temporary levy relief provided to personal financial advice licensees in respect of 2020-21 and 2021-22.

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QUALITY OF ADVICE REVIEW

KEY MESSAGE

- The Quality of Advice Review is due to provide its final report to Government by 16 December 2022.
- The Review's aim is to support Australians accessing high quality, affordable financial advice and it provides an important opportunity to streamline and simplify the regulatory settings for financial advice.

KEY FACTS AND FIGURES

- The Quality of Advice Review (the Review) is being led by an independent reviewer, Ms Michelle Levy, and is being supported by a secretariat located within Treasury.
- A paper setting out proposals for reform was subject to public consultation for four weeks from 29 August 2022 to 23 September 2022.
  - 178 submissions have been received. 149 of these are public submissions with an additional 29 confidential submissions.
  - The proposals in the paper received broad support from industry but a number of implementation risks were raised by industry and consumer groups.
- This follows on from an issues paper that was released for public consultation on 25 March 2022.
  - 134 submissions were received (117 of these are public and 17 confidential), with public submissions published on the Treasury website.
- Treasury also engaged ORIMA Research to conduct a survey of financial advisers to understand their views on their experiences with the regulatory regime. Over 3,300 advisers responded, and the results will assist in forming an evidence base for the Review.
- To date, Ms Levy has held over 80 meetings with stakeholders to gain the views of industry and consumer groups.

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- More consultation with stakeholders will take place as the Review progresses.

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QUALITY OF ADVICE REVIEW

BACKGROUND

Stakeholder engagement – industry

- Ms Levy and the Treasury secretariat have held over 80 meetings with advice industry stakeholders.

Stakeholder Group	Bilateral meetings	Proposals Paper Roundtables	Total
Advice industry (including financial advisers, stockbrokers, licensees and associated industry bodies)	16	5	21
Accountants and SMSF specialists (and associated industry bodies)	4	1	5
Digital advice providers	1	1	2
Consumer groups	3	1	4
Superannuation funds (and associated industry bodies)	11	2	13
Other product issuers (including insurers, banks and managed investment scheme issuers)	24	4	28
Other (including cross-industry meetings)	6	3	9
Total	65	17	82

- Ms Levy has also regularly spoken at industry events including conferences, seminars and webinars.

Stakeholder engagement – regulators and Government

- Ms Levy has met with ASIC six times and APRA twice to discuss the Review.
- Ms Levy has met with the Assistant Treasurer three times to discuss progress of the Review.

QUALITY OF ADVICE REVIEW

Proposal paper

- The Review released a proposals paper for consultation on 29 August 2022. The proposed reforms for consultation included:
  - Expanding the definition of personal advice to include all interactions between a financial institution (for example, bank, insurer and superannuation fund) and their customers or members and removing general advice from the regulatory framework.
  - Replacing the best interest obligations with an outcomes-based duty for all personal advice to be 'good' advice. That is advice that is reasonably likely to put clients in a better position.
  - Applying professional standards to individual advisers only where either an ongoing advice relationship exists; the client pays for the advice; or the adviser receives a commission for the advice.
  - Expressly providing for superannuation trustees to provide more personal advice to members about their superannuation accounts in the fund, including the transition to retirement. The decision about what advice is provided and how it is charged for will be left to trustees.
  - Removing the requirement for personal advice providers to provide a Statement of Advice, replacing it with a requirement to maintain adequate and complete records and to provide a written record of advice to a client on request.
  - Streamlining the requirements for the provision of Financial Service Guides and ongoing fee disclosure documents to clients.
  - Reducing reporting requirements under the Design and Distribution Obligations regime for financial advisers.
- There has been broad support from the financial services sector for the intention of the proposals, especially their aim to increase the affordability and accessibility of financial advice in Australia.
- Consumer advocacy bodies have significant concerns that the proposals reduce consumer protection, especially the proposal to replace the best interest duty in the Corporations Act with a "good advice" duty.

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QUALITY OF ADVICE REVIEW

- Most financial advisers and licensees (and their industry associations) are supportive of the de-regulatory nature of the proposals, the broadening of the definition of personal advice, and the removal of duplication between the Corporations Act and Code of Ethics.
- However, these stakeholders are concerned that the proposed change to allow individuals that have not met the education and professional requirements to provide personal advice under the current law will lower the quality of advice especially if these providers are giving complex advice.

Conflicted Remuneration

- The scope of the Review includes a review of the Life Insurance Framework (LIF), including consideration of further reducing the cap on commissions for life risk insurance products (consistent with Recommendation 2.5 of the Royal Commission).
- Despite the LIF Review being rolled into the Review, ASIC remains responsible for the assessment of a sample of life insurance advice files, which will form the basis for the Review's findings on life insurance commissions.
- The Review will also consider whether the remaining exemptions to the ban on conflicted remuneration remain justified, including the exemptions for general insurance products and consumer credit insurance products and the exemptions for non-monetary benefits (consistent with recommendation 2.6 of the Royal Commission).
- The Review is undertaking separate targeted consultation on proposals for reform on conflicted remuneration, informed by the outcomes of the LIF Review, and will include any recommendations in the final report.

Scope of the Review

- The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission) recommended "there should be a review by Government in consultation with ASIC of the effectiveness of measures that have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice. The review should preferably be completed by 30 June 2022, but no later than 31 December 2022" (Recommendation 2.3).
  - The previous Government accepted this recommendation.

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QUALITY OF ADVICE REVIEW

- The scope of the Review encompasses the key aspects of the financial advice regulatory framework and what changes can be made to enable the provision of high-quality, accessible, and affordable financial advice for retail clients.
  - This scope is broader than what was envisaged by the Royal Commission where the emphasis was on the quality of advice (and consumer protections), rather than on affordability and accessibility.
- Key exclusions from the scope of the Review include:
  - The professional standards for financial advisers.
    - The previous Government had already initiated a review of the education and training standards for financial advisers.
    - The Government has since committed to looking at reforms now to assist financial advisers in being able to meet the needs of their clients including the education requirements for experienced financial advisers.
  - Legislated definitions of ‘retail client’ and ‘wholesale client’.
    - Implications of these classifications extend beyond finical advice. For example, these definitions are used to determine whether any entity providing financial services is required to have compensation arrangements in place or whether a company undertaking a capital raising needs to prepare a disclosure document.

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NATURAL DISASTER INSURANCE

KEY MESSAGE

- The Government is committed to investing in disaster risk reduction projects and improving Australia's disaster readiness. Reducing the risk of damage to homes and businesses will put downward pressure on insurance premiums, particularly for Australians in disaster-prone areas.

KEY FACTS AND FIGURES

2022–23 October Budget

- The 2022–23 October Budget included initiatives that will help reduce the cost of insurance in natural hazard-prone areas, enhance mitigation investment and drive better outcomes for consumers. The initiatives include:
  - Creating a forum – the Hazards Insurance Partnership – for cooperation between the Australian Government and the insurance sector to address insurance issues driven by natural hazards;
  - Creating an enduring data asset within the Australian Climate Service on insurance affordability, underinsurance, and non-insurance issues;
  - Creating a national private mitigation measure knowledge base to enable more informed decisions on investments to reduce risk;
  - Pursuing public-private sector partnerships that reduce risk by leveraging risk reduction investments that the public and private sector can undertake together; and
  - Supporting better consumer outcomes by developing standard definitions of natural hazards and reviewing the standard cover regime.
- The Government has also committed to invest up to $200 million a year in disaster prevention and resilience projects through the Disaster Ready Fund.
  - Investment in projects which help reduce the risk of damage to homes and businesses will help put downward pressure on insurance premiums.

NATURAL DISASTER INSURANCE

Government assistance

- The Government is committed to rebuilding communities following this year's flood events and has moved quickly to support affected communities through disaster assistance payments.
  - More information about Government support provided for the current flood event is outlined in QB22-000289.
- In addition, the Prime Minister and NSW Premier recently announced an $800 million Northern Rivers Resilient Homes Fund in response to the February-march 2022 flood event.
  - This will enable eligible homeowners in flood-prone areas to raise, repair, or retrofit their home, or have their home voluntarily bought back.

Recent flood events

- The **February-March 2022 flooding** in South-East Queensland and New South Wales is now the costliest natural disaster for insurance costs in Australian history, recently surpassing the 1999 Eastern Sydney hailstorm.
  - As of 30 November 2022, the Insurance Council of Australia (ICA) estimate the floods in February-March have caused $5.65 billion in insured damages.
  - More than 237,000 insurance claims have been lodged across both states with around 69 per cent of claims having been closed.
- As of 30 November 2022, the **June-July 2022 flooding** in New South Wales has an estimated insurance cost of $244 million, with insurers receiving almost 22,000 claims.
- As of 30 November 2022, the **October 2022 flooding** in New South Wales, Victoria and Tasmania has an estimated insurance cost of $477 million, with insurers receiving over 17,200 claims.
- On 15 November 2022, the ICA declared the **November 2022 flooding** in parts of Central New South Wales a Significant Event.

NATURAL DISASTER INSURANCE

- Under a Significant Event, the ICA commences its claims data collection, analysis and reporting processes in consultation with its members, and works with government and agencies to understand the extent of the event's impacts.
- The ICA's disaster hotline has also been activated on 1800 734 621, which offers assistance to policyholders who are uncertain of their insurance details or have general enquiries about the claims process.
- As of 30 November 2022, the November 2022 flooding has so far resulted in almost 3,600 claims lodged with insurers, and an estimate of the extent of the damage bill is still being determined.

- As of 30 November 2022, the ICA also estimate that insured damages from storms and floods since January 2020 has reached $12.3 billion.
  - Since January 2020, insurers have received almost 788,000 claims related to storms and floods declared Insurance Catastrophes or Significant Events.
  - This means that in just three years, one in 25 adult Australians have made an insurance claim because of this extreme weather.
- The Government recognises that states, territory and local governments, as well as industry, all have a role to play in improving Australia's resilience to put downward pressure on insurance costs.
  - All states and the Northern Territory are encouraged to reform and remove state-imposed insurance taxes.
- The Government is implementing the cyclone reinsurance pool as lesiglated, and the pool is specifically designed to target cyclone and related flooding risks.
  - For further information on the cyclone reinsurance pool, see QB22-000238.

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NATURAL DISASTER INSURANCE

BACKGROUND

Commonwealth funding response to 2022 flood events

- On 4 July 2022, the Government made disaster assistance payments available to natural disaster declared communities in New South Wales following the June-July flooding.
- On 16 October 2022, the Government made disaster assistance payments available to natural disaster declared communities in New South Wales, Victoria and Tasmania following the October flooding.

ICA Insurance Catastrophe Report 2021–22

- On 8 September 2022, the ICA released their second annual *Insurance Catastrophe Resilience Report*, which uses insurer data and insights to review the last 12 months of extreme weather events and advocate for changes.
- The report make several policy recommendations such as abolishing insurance taxes, improved coordination across all levels of government, reforms to land use planning and building code regimes, and greater investment in mitigation.
- The McKell Institute, in a report released alongside the ICA report, also forecast that direct costs from extreme weather events will reach around $35 billion a year by 2050.

State, territory and industry responsibilities

State-imposed insurance taxes

- All states and the Northern Territory impose duties and levies on insurance products, and the burden of these taxes are passed on to consumers in the form of higher premiums.
  - Insurance duties add around 10 per cent to the base premium for a household insurance policy, with any levies adding more.
  - Removing these taxes would increase affordability of insurance for Australians, particularly for those living in areas that already facing high premiums.

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NATURAL DISASTER INSURANCE

Land use planning and building

- Land use planning regimes and building codes influence the long-term exposure and vulnerability of properties to natural hazard risk.
  - Decisions made when building and placing a property can increase the cost of insurance and expose people to difficult and dangerous situations if a flood, fire or other disaster occurs.
  - We have seen these issues come to light time and time again when natural disasters strike vulnerable people in vulnerable areas.
- The Royal Commission into National Natural Disaster Arrangements recommended that:
  - Insurers work with state and territory governments to provide consumers with clear guidance on individual-level mitigation actions that insurers will recognise in insurance premiums (recommendation 19.2).
  - Governments and government bodies review and improve land-use planning regimes and building codes to better manage present and future natural disaster risk when making land-use planning decisions for new developments (recommendations 19.3 and 19.4).

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Cyclone Reinsurance Pool

KEY MESSAGE

- The Government is implementing the cyclone reinsurance pool as legislated by the previous Government.

KEY FACTS AND FIGURES

- The Australian Reinsurance Pool Corporation (ARPC) has been operating the cyclone reinsurance pool since 1 July 2022, as legislated by the previous Government.
- The pool was designed specifically to improve insurance affordability for household, strata and small business properties in cyclone prone regions, mainly located in northern Australia.
- To address insurance affordability driven by broader natural disaster risks, the Government introduced initiatives in the 2022-23 October Budget that will help reduce the cost of insurance in natural hazard-prone areas, enhance mitigation investment and drive better outcomes for consumers. This includes:
  - Investing $200 million a year in disaster prevention and resilience projects through the Disaster Ready Fund; and
  - The creation of the Hazards Insurance Partnership, a forum for cooperation between the Australian Government and the insurance sector to address insurance issues driven by natural hazards.
  - More information is outlined in QB22-000240.
- To support the cyclone reinsurance pool to provide insurance savings for people in cyclone prone areas as effectively as possible, the ARPC released updated premium rates and updated modelling for the pool on 29 September 2022.
  - Following additional consultation with industry, the ARPC made a $91 million reduction in the total annual premium charged to insurers for the cyclone reinsurance pool, from $867 million in the 30 June 2022 rates, to $776 million.

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Cyclone Reinsurance Pool

  - These reductions will flow through to consumers in the form of greater savings. Compared to the initial rates releases on 30 June 2022, consumers will be better off overall.

- Participation is mandatory for general insurers to maximise the potential premium reductions. To minimise disruptions to insurer's existing reinsurance arrangements, large insurers have until December 2023 to join, and small insurers have until December 2024.

- Policyholders will see outcomes from the cyclone reinsurance pool as insurers join. Outcomes from the pool will vary based on a property's location and its level of cyclone risk, and considerations by insurers across their portfolio.

- Policyholders continue to have freedom to choose their insurer, and insurers will manage claims.

- The pool is estimated to cover 3.3 million residential, 140,000 strata, and 220,000 small business property insurance policies in cyclone affected regions.

- Legislation for the pool requires the ARPC to charge comparable premium rates in low-risk areas and target savings to medium- and high-risk areas, which are predominantly in northern Australia.
  - Expected discounts for consumers in northern Australia are on average 13 per cent, 37 per cent and 10 per cent for home, strata and SME respectively.

- The Australian Competition and Consumer Commission (ACCC) has been directed to monitor premiums of policies covered by the pool to ensure insurers are passing through savings, reporting at least annually starting in 2022.

- Treasury will undertake a legislated review of the pool in 2025 – the first year after participation is mandatory for all general insurers.

- Insurance affordability in northern Australia has been a long standing issue. For 2018-19, the ACCC found that the average combined home and contents premium was $2,500 in northern Australia, compared to $1,400 for the rest of Australia. An estimated 20 per cent of properties in northern Australia have no home building insurance, compared with 11 per cent for the rest of Australia.

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Cyclone Reinsurance Pool

BACKGROUND

Operation of the cyclone reinsurance pool

- Legislation requires the ARPC to set and approve premiums for the pool, subject to the rates:
  - being cost-neutral to Government over the long term;
  - keeping premiums for medium-to-high risk policies as low as possible, while maintaining incentives for mitigation; and
  - ensuring that premiums for low-risk policies are kept at levels comparable to what would be charged by other reinsurers.
- The pool will cover claims for cyclone and related flood damage commencing during a cyclone event, which lasts from the time a cyclone begins until 48 hours after the cyclone ends.
  - The length of a cyclone is unpredictable and can last from several days to several weeks – the pool will provide cover during this whole period plus 48 hours.
- The pool will cover household, strata and small business property policies. This includes:
  - residential home and contents, including landlord insurance and farm residential cover;
  - commercial property policies, including commercial strata, with less than $5 million sum insured across risks covered by the pool (property, contents, and business interruption); and
  - residential strata, including mixed-use strata schemes, where 50 per cent or more of floor space is used mainly for residential purposes.

Premium savings and September 2022 modelling update

- More data from more insurers has resulted in a greater accuracy of modelling.
  - While outcomes from the pool will not exactly reflect modelling – they will vary based on a property's location, its cyclone risk, and considerations by

insurers across their portfolio – this means that estimates of the pool's likely impact are more accurate than any modelling done before.

  - However, this also means modelled outcomes have changed since the June modelling.

- Except for strata where savings have increased, average savings for policyholders are expected to be somewhat lower than previous modelling.
  - Expected discounts for consumers in northern Australia were on average 19 per cent, 15 per cent and 17 per cent for home, strata and SME respectively in the June modelling.
  - Expected discounts for consumers in northern Australia in the latest modelling are on average 13 per cent, 37 per cent and 10 per cent for home, strata and SME respectively.
- In addition, if premium rates are passed through exactly by insurers, a higher proportion of people in lower risk areas could expect their insurance premiums to increase.
  - 15 per cent of home polices in northern Australia and 29 per cent of all home policies covered by the pool are expected to receive premium increases, compared to 7 per cent and 17 per cent previously.
- Overall, these changes reflect an increase in accuracy, not a decrease in savings.
- The rates revision process beneifited consumers – the ARPC reduced the total annual premium they will charge insurers for cyclone risks, which is significantly less than the commercial reinsurance premiums insurers pay.
  - If the rates had have remained higher, a higher proportion of consumers would receive higher insurance premiums and overall savings would have been lower.
  - Therefore, the rates revision process has benefited consumers, who would be paying more if it had not occurred.

Announcements by the previous government

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Cyclone Reinsurance Pool

- In February 2022, the previous government announced that the pool would reduce insurance premiums by up to $2.9 billion over 10 years for eligible household, strata and small business insurance policies. This was based on modelling at the time.
  - Homeowners in northern Australia with the most acute cost pressures were expected to benefit from discounts of up to 46 per cent, strata properties up to a 58 per cent discount and SMEs up to a 34 per cent discount.

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Business Insurance Affordability

KEY MESSAGE

- Business insurance plays a critical role in Australia. It gives businesses peace of mind that they will be able to recover if something goes wrong. The Government and regulators are monitoring business insurance markets to ensure the community is able to access insurance to manage their risks.

KEY FACTS AND FIGURES

- In the year to 30 June 2022, the general insurance industry reported a net profit after tax of $924 million (compared to $921 million the year prior). This minor increase was due to stronger underwriting performance, in part reflecting the impact of premium increases across certain classes of business.
- Certain general insurance products can be critical to businesses, as they are often a regulatory requirement or can be a prerequisite to access finance, such as trade credit insurance. Many regulatory settings that require businesses to carry certain types of insurance (e.g. public liability insurance) are mandated by State and local governments, and/or others through industry codes.
- Lower profitability and changing risk appetites have resulted in insurers and reinsurers (domestically and abroad) withdrawing from, or providing more selective cover for some types of business insurance in recent years. Where coverage is still available in these markets, there have been significant premium increases. These trends predate the COVID-19 pandemic.
- Markets affected by availability and affordability issues include:
  - Public liability insurance for tourism businesses and amusement ride operators;
  - Professional indemnity insurance (PII) for construction workers and financial advisers;
  - Directors and officers (D&O) liability insurance.

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Business Insurance Affordability

BACKGROUND

Insurance Council of Australia (ICA): “Role of the Private Insurance Market – Independent Strategic Review: Commercial Insurance Final Report”

- On 20 September 2021 the Insurance Council of Australia (ICA) released a report that sets out approaches for tackling the availability and affordability of commercial lines of insurance, particularly for small businesses.
- As part of its response to the report, the ICA have established a Business Advisory Council to collaborate on solutions for improving insurance access and affordability.

Australian Small Business and Family Enterprise Ombudsman (ASBFEO): “The Show Must Go On”

- On 6 December 2021 ASBFEO released the final report of its inquiry into the establishment of a discretionary mutual fund (DMF) for the amusement sector. In the report, ASBFEO recommended that the Government provide a $5 million loan to a discretionary mutual fund to address the challenges amusement businesses are facing in accessing affordable public liability insurance.
  - A DMF is an insurance like product where the operator of the fund has discretion over whether to pay out a claim.
  - The previous Government did not respond to this report.
- The final report also notes that for a DMF to be a viable solution, states and territories will need to undertake law reform to enable a DMF to be recognised in lieu of public liability insurance.

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Aboriginal Community Benefit Fund / Youpla Group Collapse

KEY MESSAGE

- The Government is deeply concerned about the impact of the collapse of the Youpla Group on First Nations families and has established a Funeral Benefits Program as an interim measure to support families while it investigates what further steps are required to bring a resolution to the Youpla Group collapse.

KEY FACTS AND FIGURES

- The Youpla Group Funeral Benefits Program will pay a grant in place of a funeral benefit that would otherwise have been paid by the Youpla Group before its collapse.
  - Payments will be made to eligible beneficiaries of Youpla Group policy holders who had an active policy on or after 1 April 2020.
  - Applications will be open from 7 September 2022 and will be accepted until 30 November 2023.
  - It is estimated that around 520 families will receive a grant over the program's life.
  - The program will pay up to the fund member's cover limit, which is typically $8,000 but can range between $3,000 and $20,000.
  - The Program has been developed in consultation with consumer advocates and First Nations representatives - including the Save Sorry Business Coalition - to ensure the program meets the needs of First Nations people.
  - Applications can be made via a dedicated hotline on 1800 296 989, by emailing youpla@treasury.gov.au and via the Treasury website.
- While these immediate needs are being addressed, the Government is also considering what further steps are required to bring resolution in relation to the collapse of Youpla.
- The Australian Securities and Investments Commission (ASIC) is also taking action.
  - In October 2020, ASIC started Federal Court action against Youpla Group companies for breaches of the law, including misleading and deceptive conduct. ASIC has applied to the Court to continue that legal action despite the companies entering liquidation.

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Aboriginal Community Benefit Fund / Youpla Group Collapse

  - In April 2022, ASIC started an investigation into the conduct of current and former directors of the Youpla Group and that investigation is ongoing.

- The Australian Financial Complaints Authority (AFCA) has received over 1,000 complaints relating to the Youpla Group.
  - AFCA has paused it’s processing of these complaints, in line with its usual practice in relation to insolvent financial firms.

BACKGROUND

- The Youpla Group, formerly known as the Aboriginal Community Benefit Fund (ACBF), managed 4 funeral funds that provided insurance-like products to meet the costs of funerals to predominantly First Nations peoples.
  - The 4 funds were placed into liquidation in March 2022 by the Group’s directors.
  - The 4 funds had 14,555 active policyholders at the time of insolvency.
  - 85 per cent of funeral fund members are in Queensland and NSW, with remaining members in all other jurisdictions across Australia.
  - The 4 funeral funds were not licenced by the Commonwealth but 3 of the funds were regulated under the *Funeral Funds Act 1979* (NSW).
- The Youpla Group has repeatedly engaged in misleading and deceptive conduct and the unscrupulous hawking of its funeral expense products since it started in 1992.
- ASIC took legal action against the Youpla Group in 1999, 2004 and 2020.
- ATO took legal action in 2011 against the Vanuatu based underwriter (Crown Insurance Services) of the Youpla Group’s funeral funds, which is owned by two former Youpla Group directors.
- The former government excluded the Youpla Group’s funeral funds from Centrelink’s Centrepay system in 2015 and legislated in 2019 to remove a Corporations Law exemption used by the Group.
- As at 5 September 2022, the liquidator of the Youpla Group, Mr David Stimpson of SV Partners, had on hand more than 50 unpaid funeral claims for from the families of fund members dating back to 1 December 2021.
- The Save Sorry Business Coalition has been campaigning for government action in relation to the Youpla Group collapse.

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Compensation Scheme of Last Resort

KEY MESSAGE

- The Albanese Government has re-introduced legislation to establish a financial services compensation scheme of last resort (CSLR) – the legislation is in substantially the same form as was introduced by the previous government.
- The Government is committed to the scheme's timely establishment so that the scheme can start supporting hundreds of consumers who have been waiting to be compensated for years.
- The Albanese Government has committed to establishing a CSLR and will get the job done.

KEY FACTS AND FIGURES

- On 8 September 2022, the Government introduced legislation to establish the CSLR.
  - The Government is prioritising the CSLR legislation because consumers have been waiting for 5 years for such a scheme - the Ramsay Review recommended the establishment of such a scheme to the previous government in 2017.
- On 28 September 2022, the legislation passed the House of Representatives, and the Senate referred the provisions of the legislation to the Economics Legislation Committee for inquiry and report by 24 October 2022.
  - The Committee received 41 submissions and held a public hearing on 14 October 2022.
- Alongside the introduction of CSLR legislation, the Government has also released for public consultation exposure draft CSLR Regulations. The draft Regulations prescribe reporting requirements, identify persons upon whom a levy will be imposed, and outline the methods that underpin the calculation for the amount of levy payable by leviable persons.

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Compensation Scheme of Last Resort

  - Consultation on the exposure draft Regulations closed on 7 October 2022.

- The CSLR will facilitate the payment of compensation of up to $150,000 to eligible consumers who have received a relevant determination for compensation from the Australian Financial Complaints Authority (AFCA) which remains unpaid.
- Consumers who have an unpaid determination from AFCA relating to one or more of the following financial products and/or services would be eligible for compensation under the CSLR:
  - Personal financial advice;
  - Credit provision;
  - Credit intermediation; and
  - Securities dealing.
- The CSLR is expected to commence from 1 July 2023.
- The CSLR is one of the key outstanding legislative measures from the Banking Royal Commission that remains to be implemented.

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Compensation Scheme of Last Resort

BACKGROUND

- <u>Key Design Specifications</u>
  - The CSLR is designed to provide compensation to consumers who have received a relevant determination in their favour by the Australian Financial Complaints Authority (AFCA), where that determination remains unpaid.
  - Claimants may receive compensation where they have an unpaid AFCA determination in their favour for the following financial services or products:
    - personal advice on relevant financial products to retail clients
    - credit provision
    - credit intermediation
    - securities dealing to retail clients
  - The Scheme has a compensation cap of $150,000 per AFCA determination. This is broadly equivalent to the £85,000 cap that applies to the UK Financial Services Compensation Scheme.
  - The CSLR is designed to be forward-looking. Eligibility under the scheme has been designed to align with the commencement of AFCA, which commenced operations on 1 November 2018. This is to ensure that consumers who have progressed a complaint with AFCA and received a relevant determination which remains unpaid have access to compensation under the CSLR.
  - Claimants have 12 months to notify AFCA that a determination remains unpaid. The CSLR is a last resort mechanism, and as such the liable entity must be assessed as being unlikely to pay and no other statutory compensation scheme must be available.
  - The Government will contribute towards the costs of the CSLR in its first year of operation, which will ensure the Scheme can commence as soon as possible.

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- Eligible complaints provided to AFCA before the re-introduction of the CSLR Bills on 8 September 2022 will form part of the backlog of complaints that have accumulated with AFCA since its establishment. The costs associated with addressing the backlog will be funded by a one-off levy imposed onto the ten largest financial institutions (excluding health insurers and trustees of supernnuation entities).
  - Financial institutions whose total income for the 2019-20 income year exceeds $6 billion as reported in the Report of Tax Entity Information published by the Australian Taxation Office will have the one-off levy imposed onto them.
- The Scheme will be fully industry funded moving forward through a levy on relevant financial service and credit licensees in subsequent years of the scheme's operation. Relevant entities include those that provide the financial products and/or services prescribed as within scope of the Scheme.
- The levy mechanism includes a $20 million subsector levy cap per levy period, as well as an overall scheme levy cap of $250 million per levy period. This balances the interests of consumers and industry, and provides greater certainty to entities of the maximum amount leviable against them.
- AFCA determinations relating to managed investment schemes (MISs) that remain unpaid will not be eligible for compensation under the CSLR.
- The CSLR will be subject to periodic reviews, which may consider the ongoing appropriateness of its design, including scope.

- <u>Backlog of accumulated complaints</u>
  - Accumulated complaints provided to AFCA prior to the date of introduction of the CSLR legislation, being up to 7 September 2022 inclusive, will be funded by Australia's ten-largest financial institutions (excluding health insurers and trustees of supernnuation entities) as measured by total income reported in the 2019-20 Australian Taxation Office (ATO) Report of Tax Entity Information.
  - The backlog of accumulated complaints on pause with AFCA has grown significantly since the initial introduction of the CSLR legislation in

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Parliament in October 2021. The collapse of Dixon Advisory in January 2022 has resulted in a significant increase in the number of complaints against Dixon received by AFCA, which forms part of the backlog of accumulated complaints.

- On 19 September 2022, the Federal Court imposed a $7.2 million penalty on Dixon Advisory after it found that six Dixon Advisory representatives failed to act in their clients' best interests and failed to provide advice appropriate to their clients' circumstances before providing the advice.
- As of 7 September 2022, the backlog of accumulated complaints is comprised of a total of 1,836 complaints, of which 1,638 are against Dixon Advisory.
- It is not possible at this time to estimate the value of funding required to address the costs associated with the backlog of accumulated complaints. The vast majority of the complaints have not yet been assessed by AFCA, including their validity or likely value of compensation.
- The cost of the backlog of accumulated complaints will be estimated by the CSLR operator, having regard to actuarial principles, as the amount it reasonably believes is required to fund the payment of compensation and AFCA's costs. Each of the ten largest financial institutions will contribute a proportionate amount as measured by their revenue reported for the 2019-20 financial year.
- The cap of $250 million applies to the levy imposed for the backlog of accumulated complaints.

- <u>Ongoing Costs (Annual Levy)</u>
  - An ongoing industry levy will be established to fund the CSLR in a sustainable manner going forward. The ongoing levy will be imposed onto those licensees that are authorised to provide the products and/or services that are in scope for the CSLR. The amount of levy payable by each licensee would be proportionate to its size, with a minimum levy of $100 for all relevant licensees.
  - The annual levy is estimated by the CSLR operator as what it reasonably believes, having regard to actuarial principles, will be the total amount of

funding required to make compensation payments and cover scheme costs for the upcoming levy period.

- The levy framework provides mechanisms to address circumstances where the initial estimated levy is expected to be exceeded.

• <u>Senate Committee Consideration of Bills introduced by the Albanese Government</u>

- On 28 September 2022, the Senate referred the provisions of a package of Bills, including those that would establish the CSLR, to the Senate Economics Legislation Committee for inquiry and report by 24 October 2022.
- A total of 42 submissions were received by the Committee.
  - : Stalkeholders are broadly supportive of the CSLR as proposed by the Bills, however:
    - (i) Industry representatives have proposed that the Bills be amended to reduce their financial exposure under the scheme;
    - (ii) Consumer representatives have proposed that the Bills be amended to raise the level of compensation available under the scheme to align with compensation available under the AFCA scheme, and to expand the scope of eligible products and/or services to align with the scope of the AFCA scheme.
- On 14 October 2022, the Committee held a public hearing into the Bills. Representatives from the following organisations appeared and provided evidence in relation to the CSLR provisions:
  - : Financial Services Council (FSC); Australian Banking Association (ABA); Australian Securities and Investments Commission (ASIC); CHOICE; Consumer Action Law Centre (CALC); Australian Financial Complaints Authority (AFCA); and The Treasury.

• <u>Former Government Proposal to Establish a CSLR</u>

Compensation Scheme of Last Resort

- On 28 October 2021, the former Government introduced into the House of Representatives the Hayne Royal Commission Response No. 3 (2021) package of Bills to establish the CSLR.
  - Under the Bills, consumers who had an unpaid AFCA determination relating to personal advice, credit intermediation, securities dealing, or credit provision will be eligible to receive up to $150,000 in compensation under the CSLR.
- On 11 April 2022, the CSLR bills lapsed at the prorogation of the previous Parliament.

• <u>Senate Committee Consideration of Bills Introduced by Former Government</u>

- On 25 November 2021, the Senate referred the provisions of these bills to the Senate Economics Legislation Committee for inquiry and report by 15 February 2022. A public hearing was held on 27 January 2022.
  - A key matter considered during the hearing on 27 January 2022 was the exclusion of managed investment schemes (MISs) from the scope of the CSLR. In their submissions to the committee, consumer groups (led by CHOICE), advisers (FPAA, AFA), finance brokers (MFAA) and other associations (CPA, Maurice Blackburn, Law Council of Australia) argued for the inclusion of MISs. Product issuers (ABA, COBA, FSC) and dealers (AFMA) argued for the scope to be maintained as proposed or narrowed to be initially limited to personal advice.
- On 15 February 2022, the Committee handed down its report regarding its inquiry into the provisions of the CSLR bills. The report contained two recommendations:
  - Committee recommendation (Recommendation 1): The committee recommends the bills be passed.
  - Additional comment from Labor Senators: Labor Senators supported the bills, but recommended that the scope of the CSLR could be expanded to include managed investment schemes.

• <u>Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry</u>

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- In February 2019, the former Government released its response to the Royal Commission, committing to take action on all 76 recommendations contained within the Royal Commission Final Report.
- The Royal Commission recommended that the three principal recommendations to establish a CSLR made in the Supplementary Report of the Ramsay Review should be carried into effect (Recommendation 7.1 — Compensation scheme of last resort). As part of its response to recommendation 7.1 of the Royal Commission, the former Government agreed to establish an industry-funded, forward looking CSLR.

• Ramsay Review – Compensation Scheme of Last Resort

- A CSLR was originally recommended by the Ramsay Review Supplementary Final Report, which the Government released in December 2017.
  - : On 20 April 2016, the former Government commissioned the Ramsay Review to make recommendations to improve the existing external dispute resolution framework. The Review Panel comprised of Professor Ian Ramsay (Chair), Julie Abramson and Alan Kirkland. Terms of Reference were released on 8 August 2016.
  - : On 3 February 2017, the Government amended the Terms of Reference to require the Panel to provide a separate report on the establishment, merits and design of a last resort compensation scheme and on the merits and issues involved in providing access to redress for past disputes.
- The Supplementary Final Report recommended that an industry-funded, limited and carefully targeted forward-looking CSLR be established.
  - : In particular, the Report recommended that a CSLR should be initially restricted to financial advice failures but be scalable if in the future other significant problems emerge.

• Past proposals for a last resort compensation scheme

- The Parliamentary Joint Committee on Corporations and Financial Services' 2009 Inquiry into financial products and services in Australia recommended that the government investigate the costs and benefits of

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differing models of a statutory last resort compensation fund for investors (recommendation 10).

– The 2012 Richard St John report *Compensation arrangements for consumers of financial services* recommended against implementing a compensation scheme of last resort and concluded it would be inappropriate and possibly counterproductive to introduce one (rec. 1).

  : The then Minister for Financial Services and Superannuation, the Hon Bill Shorten MP, commissioned that inquiry and accepted that particular recommendation.

– The Parliamentary Joint Committee on Corporations and Financial Services' 2012 Inquiry into the collapse of Trio Capital did not support a general compensation scheme for self-managed super funds (rec. 1).

– On 21 April 2016, the Australian Bankers' Association announced it would consider setting up a last resort compensation scheme for financial advisers, as part of a Strengthening Community Trust plan.

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Consumer Credit Reforms

KEY MESSAGE

- The Albanese Government believes well-regulated markets for consumer credit products are an important part of a well functioning economy.
- That is why the Government introduced the *Financial Sector Reform Bill 2022* (the Bill) into Parliament on 8 September 2022. In part, the Bill gives effect to the Government's response to the 2016 Review on Small Amount Credit Contract Laws.

KEY FACTS AND FIGURES

- The Review recommended reforming Small Amount Credit Contracts (SACCs), consumer leases and anti-avoidance laws to address a range of consumer harms arising from certain lending practices.
- In December 2020, the former government introduced the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020* which packaged their small amount credit contracts, consumer lease and anti-avoidance measures, with responsible lending obligations reforms.
  - That Bill lapsed when the 2022 federal election was called.
- Key features of the Government's Bill (which more closely aligns with the SACCs Review recommendations) include:
  - Limiting the portion of a person's income that can be committed to SACCs and consumer leases to 10 per cent (for each) of a person's net income each.
  - Introducing caps on what a consumer lessor can charge for a consumer lease.
  - Prohibiting unsolicited SACC offers or making referrals to an unlicensed credit providers.
  - Requiring SACCs to have equal repayment and equal repayment intervals to prevent SACC providers from artificially extending the life of the loan.

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Consumer Credit Reforms

- Prohibiting SACC providers from charging monthly fees in respect to any residual term of the loan after a consumer repays the loan early.
- Disclosure requirements regarding the base price of goods hired under the lease, plus new requirements to document suitability assessments.
- Prohibitions on door-to-door selling of consumer leases for household goods and selling consumer leases outside of a standard business premise (eg. in public spaces).
- Enhanced penalties and sanctions for breaches.
- New anti-avoidance measures will prohibit schemes designed to avoid SACCs and consumer leases restrictions, and product intervention orders.

- The Government has announced that it is not proceeding with changes to the responsible lending obligation regime.
- Regulations to support the legislation are currently being drafted and will be available for consultation later this year.

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Consumer Credit Reforms

BACKGROUND

Small amount credit contracts (SACCs) and consumer leases

- SACCs are regulated by the *National Consumer Credit Protection Act 2009* (the Credit Act) and are often referred to as 'payday' loans. SACCs provide credit of up to $2,000 to a consumer with the term of the contract being between 16 days and one year. Loans with terms less than 16 days are generally prohibited. Data on the SACCs industry is varied:
  - According to the most recent industry funding data from ASIC, in 2020–21 there were 143 small and medium amount credit contract providers, who lent $958 million in (SACCs and non-SACCs) loans of up to $5,000.
  - The National Retail Credit Association (NRCA), the SACCs sector industry body, advise in 2020-21 there were 400,000 SACCs applications approved valued at $300 million (down from 2014-15 figures of 1.3 million approved applications valued at $667 million). The NRCA mainly attributes this decline to the rise of competition from the Buy-Now-Pay-Later sector.
- Consumer leases are for personal purposes with terms greater than four months, excluding novated leases and leases for a business purpose.
  - They allow a consumer to rent an item (e.g. a fridge or washing machine) over a period of time with the lessor retaining ownership of the item and overall responsibility for maintaining the item.

The Review of Small Amount Credit Contract Laws

- On 7 August 2015, the previous Government established the Review to fulfil a statutory requirement under the Credit Act. The Review reported to the Government on 3 March 2016 and made 24 recommendations. The final report was tabled in Parliament on 19 April 2016.
  - The former Government's response accepted 14 of the recommendations in full, six were partially accepted, two were rejected, one was accepted in-principle, and one was noted.

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Consumer Credit Reforms

Differences between the Bill and that of the former Government

- Schedule 4 to the Financial Sector Reform Bill 2022 better reflects the recommendations of the SACCs Review than the previous government's Bill. Key differences include:
  - setting protected income threshold amounts to 10 per cent (of net income) for small amount credit contracts and 10 per cent for consumer leases regardless of borrowers' source of income.
  - enabling regulations to extend the prohibition of unsolicited offers of SACCs products to previously unsuccessful loan applicants (rather than only current or former SACCs customers).
  - prohibiting a SACC provider from referring a consumer to an unregulated credit provider.
  - prohibiting the charging of establishment fees separate to the fee cap on consumer leases.
  - excluding delivery and installation costs in the calculation of the base amount which is used to calculate the four per cent monthly fee cap for consumer leases. These fees can still be charged for separately.
  - extending the proposed ban on the unsolicited marketing of consumer leases from door-to-door sales to include unsolicited marketing from non-standard business premises (e.g. a temporary presence in a public space).

Responsible Lending Obligations

- Responsible lending obligations require providers of regulated credit to not offer credit or provide credit assistance in relation to products if they are unsuitable for the customer.
  - A product is unsuitable if the consumer will only be able to comply with their financial obligations under the product with substantial hardship; or the product will not meet the consumer's requirements or objectives.
- The previous Government's 2020 Bill sought to remove RLOs for all products other than SACCs and consumer leases, rely on APRA's prudential risk management standards for other bank lending and applying new equivalent standards to other non-bank lending.

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Consumer Credit Reforms

- Consumer group stakeholders were strongly opposed to these reforms.
  - They were concerned that the risk management standards applied at a systemic level for providers and not to each individual lending decision. The proposed standards lacked the prescription of current RLO laws presented greater enforcement and dispute resolution challenges.
- Providers (other than providers of SACCs and consumer leases) supported the reforms. The proposed reforms would have created three sets of laws for affordable lending (for SACCs/Consumer Leases, other lending by banks, other lending by non-banks) which would have introduced complexity and competitive neutrality concerns.
- The Government has announced that it is not proceeding with changes to the responsible lending obligation regime.

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Buy Now Pay Later

KEY MESSAGE

- The Australian Government is taking action to address the risks of consumer harm associated with buy now pay later (BNPL) products.
- On 21 November 2022, the Government released an options paper on seeking feedback on the appropriate regulatory approach to maintain the benefits of BNPL while ensuring consumers have adequate protections.
- The Options paper draws on the findings from extensive stakeholder consultations led by Treasury with consumer groups, regulators and the BNPL sector.

KEY FACTS AND FIGURES

- The Options paper presents three broad reform options of varying levels of regulatory intervention for public consideration, ranging from a light touch approach to the application of responsible lending obligations under the Credit Act, with a hybrid approach drawing on elements of both.
- The 2022 RBA's Payments System Board's annual report found that there are now approximately 7 million active BNPL accounts in Australia. A consumer may hold multiple active accounts. The annual report found:
  - During the 2021-22 financial year, $16 billion was spent using BNPL, equivalent to 2 per cent of Australian card purchases by value.
- Many BNPL providers have signed up to a BNPL industry Code of Practice (the Code), which came into force 1 March 2021. The Australian Finance Industry Association (AFIA) assert that the Code covered 95% of accounts upon its commencement. The Code strengthens consumer protection and improves industry practices.
  - On 14 October 2022, AFIA commissioned an independent review of its BNPL Code. The review is due to report the findings by 1 March 2023.

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Buy Now Pay Later

- An industry report led by AFIA, published June 2022, found that:
  - On average, merchants that accepted BNPL saw their revenue increase by 5.6 per cent during the 2020-21 financial year. Businesses with a turnover less than $250,000 a year, also saw, on average, an increase of 8.8 per cent in revenue.
  - 18 per cent of those surveyed missed a BNPL repayment in the past 12 months; 4.4 per cent went without essentials to make repayments; and 0.34 per cent of active BNPL accounts were the subject of hardship arrangements.

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Buy Now Pay Later

BACKGROUND

- On 12 July 2022, the Assistant Treasurer and Minister for Financial Services' announced the Government will consult on ways to improve the regulation of credit in Australia. This includes considering regulation of wage advance products and removing the point-of-sale exemption (POS), which excludes certain retailers from licensing obligations.
  - The Government also intends to shortly release Options papers on regulating wage advance products and the POS exemption.
- The key concerns that consumer groups have raised in the BNPL consultation include:
  - Unaffordable lending practices;
  - A lack of consistent and timely access to hardship assistance;
  - Excessive late payment fees;
  - A lack of credit reporting of BNP debts and defaults; and
  - A lack of transparency regarding fees charged to merchants and the potential inflation of the prices of goods and services to cover those fees.
- BNPL arrangements, such as Afterpay, are an alternative to traditional forms of credit and allow consumers to pay off goods and services in instalments. The business models involves a BNPL provider paying a merchant for goods or services and the consumer paying back the BNPL provider directly over time.
- BNPL arrangements operate under an exception under the *National Consumer Credit Protect Act 2009* for low cost credit contracts. To fall under this exception, BNPL products generally do not charge interest and only charge consumers fees for the provision of credit below prescribed fee caps ($200 in the first year; $125 for each following year).

Buy Now Pay Later

- Consequentially, BNPL providers are not required to hold an Australian Credit Licence, conduct unsuitability assessments (i.e., responsible lending obligations), engage in credit reporting, or provide timely hardship assistance.
- Regulatory arrangements that BNPL is still subject to include:
  - The PIP which allows ASIC to intervene to modify or ban financial and credit products products where it identifies significant consumer detriment.
  - The DDO regime which requires product issuers to determine an appropriate target market for their products, and then requires issuers and distributors to take reasonable steps to ensure they are distributed accordingly.
  - Various consumer protection provisions in the *ASIC Act*, including provisions relating to misleading and deceptive conduct, unconscionable conduct and unfair contract terms.
- The BNPL sector has been rapidly growing (from a low base) but there are signs growth is plateauing in some market segments. Alongside new entrants, established financial institutions (such as the Commonwealth Bank of Australia) are joining the domestic market. BNPL is also evolving and expanding to new product and service offerings.
  - The average transaction value is $151 and the average frequency of use by those with active accounts is 16.6 times per annum, according to AFIA.

Industry BNPL Code of Practice

- AFIA's Code of Practice for BNPL providers was developed in consultation with ASIC, the BNPL industry, merchants and consumer groups.
  - As at November 2022, nine BNPL providers – Afterpay, Brighte, Humm, Klarna, Latitude, Openpay, Payright, Plenti and Zip, had joined the Code.

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Buy Now Pay Later

– The Code is an industry response to a recommendation for industry self-regulation by the Senate Economics Reference Committee's inquiry into *Credit and financial services targeted at Australians at risk of financial hardship* in February 2019.

- The Code aims to increase consumer protections by requiring providers to conduct tiered suitability tests based on the amount of BNPL transactions; to offer hardship provisions; as well as imposing warning and communication requirements.

- The Code is contractually enforceable against Code members and is enforceable by consumers through the Australian Financial Complaints Authority.

International moves towards BNPL regulation

- In November 2022, the New Zealand Government announced its plans to regulate BNPL under its *Credit Contract and Consumer Finance Act 2003*, and requires BNPL providers to conduct a scalable affordability assessment with exclusions given to smaller loans below a threshold (subject to further consultation).

- In October 2021, the UK Government released its consultation paper on BNPL regulation. On 20 June 2022, the UK Government published its response to the consultation, confirming that BNPL arrangements will be regulated. Lenders will be required to conduct affordability checks (details of which are yet to be determined), and be subject to enhanced disclosure obligations.

- In December 2021, in the United States of America, the Consumer Financial Protection Bureau (CFPB), announced a public, market-monitoring inquiry into BNPL products and business practices.

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Buy Now Pay Later

The Payments System Review

- The Review of the Australian Payments System was handed down in August 2021. It found that although the payments system has served Australia well, the regulatory architecture should be updated to create more productivity-enhancing innovation and competition, and be responsive to advances in payments technology and changes in consumer demand.
- See QB22-000243 for more detail. The Government has not yet announced its reform agenda for the payments system.

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Financial Services Royal Commission

KEY MESSAGE

- The Financial Services Royal Commission (FSRC) made 54 recommendations to Government. Of those recommendations. 43 have been completed and 6 have been introduced into Parliament.

KEY FACTS AND FIGURES

- 54 recommendations were directed to the Government, 12 to the regulators and 10 to the industry.
- Key FSRC legislative measures that remain to be implemented in full are the Compensation Scheme of Last Resort (CSLR) and the extension of the Banking Executive Accountability Regime (BEAR) to all APRA-regulated industries.
- The Albanese Government introduced legislation to establish a CLSR on 8 September 2022 and is committed to delivering this with appropriate consultation with industry.
- The Albanese Government introduced legislation adopting the FSRC recommendation to extend the BEAR on 8 September 2022. The Bill would establish a Financial Accountability Regime (FAR).
- On 12 July, the Government announced that it would commence consultations on options for reforming the regulation of Buy Now Pay Later. It indicated that as part of that consultation it would also examine whether the point of sale exemption to consumer credit licencing should be retained.

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Financial Services Royal Commission

BACKGROUND

- **43 recommendations already completed:**

0. Recommendation 1.1 — The National Consumer Credit Protection Act should not be amended to alter the obligation from assessing credit to be ‘not unsuitable’ to suitable.

1. Recommendation 1.2 — Introduce a new best interest duty for mortgage brokers.

2. Recommendation 1.3 — Mortgage brokers’ remuneration structures should be changed so that the borrower and not the lender, should pay the mortgage broker a fee for acting in connection with home lending.

3. Recommendation 1.9 — the National Consumer Credit Protection Act should not be amended to extend its operation to lending to small businesses.

4. Recommendation 1.11 – A national scheme of farm debt mediation should be enacted.

5. Recommendation 2.1 — the law should be amended to provide that to provide that ongoing fee arrangements for financial advice must be renewed annually by the client; must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged; and may neither permit nor require payment of fees from any account held for or on behalf of the client except on the client’s express written authority.

6. Recommendation 2.2 — the law should be amended to require financial advisers, before providing personal advice to a retail client, to give to the client a written statement explaining simply and concisely why the adviser is not independent, impartial and unbiased.

7. Recommendation 2.4 — Grandfathering provisions for conflicted remuneration in financial advice should be repealed.

8. Recommendation 3.2 — Deduction of any advice fee (other than for intra fund advice) from a MySuper account should be prohibited.

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9. Recommendation 3.3 — Deduction of any advice fee (other than for intra fund advice) from superannuation accounts other than MySuper accounts should be prohibited unless the requirements about annual renewal, prior written identification of service and provision of the client's express written authority set out in Recommendation 2.1 in connection with ongoing fee arrangements are met.

10. Recommendation 3.6 —The SIS Act should be amended to prohibit trustees of a regulated superannuation fund, and associates of a trustee, acting in a manner that may reasonably be understood by the recipient to objective of having the recipient nominate the fund as a default fund or having one or more employees of the recipient apply or agree to become members of the fund.

11. Recommendation 3.7 —Breach of the trustee's covenants or the director's covenants set out in the SIS Act should be enforceable by action for civil penalty.

12. Recommendation 4.2 —remove the exclusion of funeral expenses policies from the definition of 'financial product'; and put beyond doubt that the consumer protection provisions of the ASIC Act apply to funeral expenses policies.

13. Recommendation 4.7 — The unfair contract terms provisions in the ASIC Act should apply to insurance contracts regulated by the Insurance Contracts Act.

14. Recommendation 4.11 — the Corporations Act should be amended to require that AFSL holders take reasonable steps to co-operate with AFCA in its resolution of particular disputes, including, in particular, by making available to AFCA all relevant documents and records relating to issues in dispute.

15. Recommendation 4.13 —Treasury, in consultation with industry, should determine the practicability, and likely pricing effects, of legislating universal key definitions, terms and exclusions for default MySuper group life policies.

Financial Services Royal Commission

16. Recommendation 6.1 —The ‘twin peaks’ model of financial regulation should be retained (recommendation made in relation to suggestions that there should be a standalone superannuation regulator).
17. Recommendation 6.13 —APRA and ASIC should each be subject to at least quadrennial capability reviews. A capability review should be undertaken for APRA as soon as is reasonably practicable.
18. Recommendation 1.6 — Australian Credit Licence holders (ACL) should be bound by information-sharing and reporting obligations in respect of mortgage brokers (provide information to new employers) and make necessary inquiries to determine the nature and extent of a mortgage broker’s misconduct and where there is sufficient information to suggest that a mortgage broker has engaged in misconduct, tell affected clients and remediate those clients promptly.
19. Recommendation 1.15 — Establish an enforceable codes framework that enables ASIC to approve codes of conduct. Industry codes approved by ASIC to include ‘enforceable code provisions’, which are provisions in respect of which a contravention will constitute a breach of the law; and a framework for the establishment and imposition of mandatory financial services industry codes.
20. Recommendation 2.7 — all Australian Financial Services Licensees (AFSLs) should be required, as a condition of their licence, to give effect to reference checking and information-sharing protocols for financial advisers, as currently applies under the ABA’s protocol.
21. Recommendation 2.8 —All AFSL and ACL holders should be required, as a condition of their licence, to report ‘serious compliance concerns’ about individual financial advisers and mortgage brokers to ASIC on a quarterly basis.
22. Recommendation 2.9 — All AFSL holders should be required, when they detect that a financial adviser has engaged in misconduct in respect of financial advice given to a retail client, make whatever inquiries are reasonably necessary to determine the nature and full extent of the adviser’s misconduct; and where there is sufficient information to suggest that an adviser has engaged in misconduct, tell affected clients and remediate those clients promptly.

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23. Recommendation 3.1 — The trustee of an RSE should be prohibited from assuming any obligations other than those arising from or in the course of its performance of the duties of a trustee of a superannuation fund.

24. Recommendation 3.4 — Hawking of superannuation products should be prohibited. That is, the unsolicited offer or sale of superannuation should be prohibited except to those who are not retail clients and except for offers made under an eligible employee share scheme. The law should be amended to make clear that contact with a person during which one kind of product is offered is unsolicited unless the person attended the meeting, made or received the telephone call, or initiated the contact for the express purpose of inquiring about, discussing or entering into negotiations in relation to the offer of that kind of product.

25. Recommendation 3.8 —The roles of APRA and ASIC with respect to superannuation should be adjusted, as referred to in Recommendation 6.3.

26. Recommendation 4.1 —Consistently with Recommendation 3.4, which prohibits the hawking of superannuation products, hawking of insurance products should be prohibited.

27. Recommendation 4.3 —A Treasury-led working group should develop an industry-wide deferred sales model for the sale of any add-on insurance products (except policies of comprehensive motor insurance). The model should be implemented as soon as is reasonably practicable.

28. Recommendation 4.4 —ASIC should impose a cap on the amount of commission that may be paid to vehicle dealers in relation to the sale of add-on insurance products.

29. Recommendation 4.5 —the Insurance Contracts Act should be amended, for consumer insurance contracts, to replace the duty of disclosure with a duty to take reasonable care not to make a misrepresentation to an insurer.

30. Recommendation 4.6 – the Insurance Contracts Act should be amended so that an insurer may only avoid a contract of life insurance on the basis of non-disclosure or misrepresentation if it can show that it would not have entered into a contract on any terms.

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31. Recommendation 4.8 — The handling and settlement of insurance claims, or potential insurance claims, should no longer be excluded from the definition of 'financial service'.

32. Recommendation 6.3 — The roles of APRA and ASIC in relation to superannuation should be adjusted to accord with the general principles that, APRA, as the prudential regulator for superannuation, be responsible for ensuring that financial promises made by superannuation entities are met and ASIC to regulate the relationship between RSE licensees and individual consumers.

33. Recommendation 6.4 —Without limiting any powers APRA currently has under the SIS Act, ASIC should be given the power to enforce all provisions in the SIS Act that are, or will become, civil penalty provisions or otherwise give rise to a cause of action against an RSE licensee or director for conduct that may harm a consumer. There should be co-regulation by APRA and ASIC of these provisions.

34. Recommendation 6.5 —APRA should retain its current functions, including responsibility for the licensing and supervision of RSE licensees and the powers and functions that come with it, including any power to issue directions that APRA presently has or is to be given.

35. Recommendation 6.9 — The law should be amended to oblige each of APRA and ASIC to co-operate with the other; share information to the maximum extent practicable; and notify the other whenever it forms the belief that a breach in respect of which the other has enforcement responsibility may have occurred.

36. Recommendation 6.11 —The ASIC Act should be amended to align with requirements in the APRA Act for the times and places of Commissioner meetings, the quorum required, who is to preside, how voting is to occur and the passing of resolutions without meetings.

37. Recommendation 7.2 — implement the recommendations of the ASIC Enforcement Review Taskforce that relate to self-reporting of contraventions by financial services and credit licensees should be carried into effect (breach reporting).

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38. Recommendation 3.5 – (superannuation) a person should have only one default account. To that end, machinery should be developed for ‘stapling’ a person to a single default account.

39. Recommendation 6.14 — new oversight authority for APRA and ASIC, independent of Government, should be established by legislation to assess the effectiveness of each regulator in discharging its functions and meeting its statutory objects. The authority should be comprised of three part time members and staffed by a permanent secretariat. It should be required to report to the Minister in respect of each regulator at least biennially. Introduced in the Financial Regulator Assessment Authority Bill 2021 on 13 May 2021.

40. Recommendation 2.10 —establish a new disciplinary system for financial advisers that: requires all financial advisers who provide personal financial advice to retail clients to be registered; provides for a single, central, disciplinary body; requires AFSL holders to report ‘serious compliance concerns’ to the disciplinary body; and allows clients and other stakeholders to report information about the conduct of financial advisers to the disciplinary body.

41. Recommendation 7.3 — As far as possible, exceptions and qualifications to generally applicable norms of conduct in legislation governing financial services entities should be eliminated.

42. Recommendation 7.4 — As far as possible, legislation governing financial services entities should identify expressly what fundamental norms of behaviour are being pursued when particular and detailed rules are made about a particular subject matter.

- **Six recommendations have been introduced into Parliament:**

1. Recommendation 3.9 — The Banking Executive Accountablity Regime (BEAR) should be extended to all RSE licensees.

2. Recommendation 4.12 — the BEAR should be extended to all APRA-regulated insurers, as referred to in Recommendation 6.8.

3. Recommendation 6.6 —ASIC and APRA should jointly administer the BEAR.

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4. Recommendation 6.7 — Require, as part of obligations under BEAR, for accountable persons to deal with APRA and ASIC in an open, constructive and co-operative way.

5. Recommendation 6.8 —the BEAR should be extended to all APRA-regulated financial services institutions. APRA and ASIC should jointly administer those new provisions.

6. Recommendation 7.1 —establish a compensation scheme of last resort consistent with the recommendations made by the review into external dispute and complaints arrangements' supplementary final report.

- **Two recommendations are being progressed through the Quality of Advice Reivew**:

1. Recommendation 2.3 — In three years' time, there should be a review by Government in consultation with ASIC of the effectiveness of measures that have been implemented by the Government, regulators and financial services entities to improve the quality of financial advice. The review should preferably be completed by 30 June 2022, but no later than 31 December 2022.

2. Recommendation 2.6 — The review referred to in Recommendation 2.3 (review of financial advice) should also consider whether each remaining exemption to the ban on conflicted remuneration remains justified, including the exemptions for general insurance products and consumer credit insurance products; and the exemptions for non-monetary benefits.

- **Three recommendations currently not being progressed:**

1. Recommendation 1.4 — Establish a Treasury-led working group to monitor and, if necessary, adjust the remuneration model referred to in Recommendation 1.3, and any fee that lenders should be required to charge to achieve a level playing field, in response to market changes.

    : The Albanese Government indicated during the election campaign that it did not intend to proceed with the review of mortgage broker remuneration.

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2. Recommendation 1.5 — Harmonise the laws that apply to mortgage brokers with those that currently apply to financial advisers after a period of time.
   : to be considered further post the quality of advice review.
3. Recommendation 1.7 — remove the exemption of retail dealers from the operation of the NCCP Act.
   : Being considered as part of the Government's consultations on BNPL.

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Crypto Asset Ecosystem: Policy and Regulation

KEY MESSAGE

- The Government has announced a plan for crypto asset reforms to improve the way Australia's regulatory system manages crypto assets.
- The fallout from the FTX collapse is being closely monitored, including any spillovers into financial markets more broadly. These developments highlight the lack of transparency and consumer protection offered by service providers in the crypto market, which is why the Government is taking action to improve the regulatory frameworks while still promoting innovation.
- The token mapping discussion paper to be released this year will be the first step in a broad package of initiatives to harness the benefits of the crypto ecosystem and provide greater protections for consumers. Early 2023 will see consultation on proposals to safeguard crypto assets held by third party custodians and regulate exchanges. Legislation is expected to be introduced to Parliament in 2023.
- The Government supports the joint pilot by the RBA and the Digital Finance Cooperative Research Centre (DFCRC) to explore the use cases for, and potential economic benefits of, an Australian central bank digital currency (CBDC). The Government looks forward to seeing its final outcomes.

KEY FACTS AND FIGURES

- On 22 August 2022, the Government announced its plan on crypto asset reforms to create a regulatory framework which allows consumers to participate in crypto asset markets while being protected.
- As a result of industry feedback, Treasury is prioritising token mapping to help identify how crypto assets and related services could be regulated, with a public consultation paper to be released this year.
  - Work is also being progressed to identify gaps in regulation, develop a licensing framework, consider custody obligations, review innovative organisational structures and provide consumer safeguards.
- As it stands, there is limited regulatory oversight of crypto assets. Regulation largely depends upon the nature of the particular crypto asset and its characteristics and rights. A crypto asset may or may not be a financial product as defined in law, depending on its characteristics.

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Crypto Asset Ecosystem: Policy and Regulation

- Crypto assets are high risk investments with significant price volatility, and the protections available to consumers may vary. If a crypto asset is a financial product ASIC has jurisdiction under the Corporations Act. If a crypto asset is not a financial product the Australian Consumer Law applies.

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Crypto Asset Ecosystem: Policy and Regulation

BACKGROUND

What are crypto assets?

- Crypto assets are a type of digital asset that uses cryptography and blockchain or other distributed ledger technology (DLT) to provide features such as security. The characteristics and purposes of crypto assets vary significantly.
- The underlying technology also provides broader opportunities for innovation in a range of areas. While the best known examples of blockchain technology are crypto assets, applications are emerging across a range of fields, such as payments, agriculture and resource supply chains.

Regulation of crypto assets in Australia

- Depending on the characteristics and use of a crypto asset, certain laws and regulations may apply in Australia. This includes prohibitions against misleading or deceptive conduct; anti-money laundering and counter-terrorism financing (AML/CTF) compliance and reporting obligations for digital currency exchanges (including know your customer (KYC) requirements); and potential tax consequences of acquiring and disposing of crypto assets.
- In October 2021, the Select Committee on Australia as a Technology and Financial Centre released its final report, recommending establishing a market licencing regime, a custody regime, a token mapping exercise and a new company structure for Decentralised Autonomous Organisations (DAO).
- In March 2022 a consultation paper was released on the regulation of crypto asset secondary service providers. Consultation closed on 27 May 2022.

Stakeholder interest

- Industry is calling for more certainty in the regulation of crypto assets, to give firms greater confidence in making investments and improve certainty for other firms who provide services to crypto-related businesses. There are also calls for stronger consumer and investor protection.

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Crypto Asset Ecosystem: Policy and Regulation

Ongoing work

- The Government and regulators continue to monitor developments in crypto assets to ensure that risks are mitigated as appropriate while balancing potential benefits. Inter-agency collaboration is ongoing, including through the Council of Financial Regulators, the ACCC, Austrac, and AGD. The Government and regulators also engage in international forums considering crypto assets, including the G20 and the Financial Stability Board.
- On 22 June 2022, the Government announced that it will clarify in legislation that crypto assets are not regarded as a foreign currency for tax purposes. This continues the current tax treatment of crypto assets and is consistent with the ATO's published view. Public consultation on exposure draft legislation to give effect to the announcement was conducted between 6 September and 30 September.

CBDC pilot

- A CBDC is a new form of digital money that is issued by a country's central bank and denominated in the national unit of account. It represents a direct liability of the central bank.
- On 9 August 2022, the RBA and the DFCRC commenced a joint pilot to explore the use cases for, and potential economic benefits of, an Australian CBDC. Completion of use case testing, and publication of the final report, are scheduled for mid-2023.
  - The pilot is trialling a "general purpose" CBDC. This means that both retail and wholesale use cases will be considered.
  - Treasury is a member of the pilot's governance arrangements, and has contributed funding for an economic impact analysis of proposed CBDC use cases.
- Industry participants will be selected to build and test CBDC use cases within the pilot environment, which will be built by the DFCRC and operated by the RBA. At this stage, the RBA and DFCRC are targeting 5-10 participants.
  - The pilot has already received significant industry interest, including over 80 early expressions of interest from prospective participants.

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Franking Credits

KEY MESSAGE

- The Albanese Government is committed to maintaining the integrity of the tax system and cracking down on tax avoidance.

KEY FACTS AND FIGURES

- Some companies are exploiting loopholes to allocate excess franking credits to shareholders, in a way that is outside the intent of Australia's dividend imputation system.
- Two measures: *franked distributions funded by capital raisings* and *improving the integrity of off-market share buy-backs* are designed to close these loopholes.

Franked distributions funded by capital raisings

- This measure was announced by the former government and then Treasurer Scott Morrison as part of the 2016-17 Mid-Year Economic and Fiscal Outlook.
  - It is designed to close a minor taxation loophole, which the previous government failed to legislate.
  - The Albanese government is currently considering feedback on legislation that closes this loophole, including feedback on the start date of the measure.
- Currently, the loophole allows companies to raise money from shareholders for no commercial purpose, only to distribute that money back to shareholders with franking credits attached.
  - These arrangements hurt our budget bottom line, as this is not how our franking credit system was intended to work.
- Companies should be investing and distributing profits when it makes economic sense, not using a tax loophole to dress up a capital raising as a franked dividend.
- The vast majority of shareholders will be unaffected, and will continue to receive franked dividends.

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Franking Credits

- The proposed changes would not affect the tax treatment of regular dividends that individuals receive from their investments.
- The proposed measure is also unrelated to the proposed changes to franked dividends in 2019, which have been abandoned.
- The estimated revenue savings from this measure is $10 million per year.

Off market share buy-backs

- This measure, which aligns the tax treatment of off-market share buybacks with on-market share buybacks, was announced by the Albanese Government in the October 2022-23 Budget.
  - It is an integrity measure that closes a loophole which allows large corporations to buy back their shares at below market price.
  - The government is currently consulting on draft legislation that implements this measure.
- Companies should be investing and distributing profits when it makes economic sense – not because of a tax loophole.
- The vast majority of shareholders will be unaffected, and will continue to receive franked dividends.
  - The proposed changes would not impact the way franking credits operate and is unrelated to the proposed changes to franked dividends in 2019 which have been abandoned.
- These changes do not affect the tax arrangements on regular dividends that individuals receive from their investments.
- The estimated revenue savings from this measure is $150 million in 2023-24 and $200 million in each of 2024-25 and 2025-26.

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Franking Credits

BACKGROUND

- Franking credits are tax credits attached to dividends (known as ‘franked dividends’) paid by Australian companies to their Australian shareholders. They represent the company tax that has already been paid on the underlying profits from which the dividends were paid.
- They’re a feature of Australia’s dividend imputation system designed to avoid double taxation – if a company has already paid tax on certain profits, this should be reflected when determining how much tax an investor pays on the same profit.
- But not all profits are distributed to Australian shareholders – some are distributed to foreign shareholders (who are not eligible to use franking credits) and other profits are reinvested into the company. This means that a company can have unallocated franking credits that can become ‘trapped’ in its franking account.
- Some companies are exploiting loopholes to allocate these franking credits to shareholders, in a way that is outside the intent of the system and is hurting the budget bottom line.

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MODERNISING BUSINESS REGISTERS

KEY MESSAGE

- The Modernising Business Registers (MBR) Program will simplify how businesses interact with Government and improve business data.

KEY FACTS AND FIGURES

- The MBR Program will consolidate more than 30 business registers held by the Australian Securities and Investments Commission (ASIC) and the Australian Taxation Office (ATO) onto a modernised business registry platform, hosted by the ATO.
- The previous Government announced the MBR Program in late 2019 and allocated $480.5 million for implementation. Updated estimates now suggest full delivery of the Program may cost up to $1.5 billlion.
- The Government has provisioned an additional $166.2 million over 4 years in the 2022-23 Budget.
  - This includes $86.2 million to stabilise ASIC systems and operate and regulate the Director Identification Numbers (Director ID) regime and $80 million for ATO and ASIC to continue design and delivery.
- Agencies are working on cost and timing estimates to support government decision-making, and will provide briefing ahead of the next budget.
- MBR is complex, and will be delivered through multiple tranches over several years. The next tranche is the Companies Register, the largest of the Program.
- Director ID was the first tranche delivered in MBR. As at 7 November 2022, more than 1.2 million Director IDs have been issued.
  - The ATO and ASIC are already using this information to prevent fraud activity.
- Legislation to delay the automatic commencement of MBR Legislation from 22 June 2022 until 1 July 2026 has received royal assent.
  - The Minister can bring forward the commencement date by Proclamation.

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MODERNISING BUSINESS REGISTERS

BACKGROUND

- The MBR Program will create a new registry service administered by the Registrar (the Commissioner of Taxation) of the Australian Business Registry Services (ABRS).
  - The Registrar is responsible for assisting ASIC to perform its registry functions (under a delegation from ASIC) and administering the Director ID and Australian Business Register (ABR) functions. As registers are completed, the Registrar will assume primary responsibility.
- Registers need to be modernised due to ageing technology, poor data quality, and a duplication of government functions. These result in limitations to government capabilities, a poor user experience, and a system unresponsive to policy needs.
- A modern Commonwealth business registry system is being built with high levels of reliability, accessibility, and security. It will consolidate data from the ABR and ASIC registers to establish a single authoritative source of business information with increased levels of accuracy and availability.
- The new registry system is being delivered using a Commercial Off the Shelf product developed by Foster Moore (a Teranet company).
- Director IDs are a unique identifier providing traceability of a director's relationships over time, and across companies, to help regulators and external administrators investigate a director's involvement in unlawful activity such as illegal phoenix activity.
- There are around 2.5 million existing directors with approximately 150,000-200,000 directors added to the ASIC Company Register each year.
- New directors are now required to apply for a Director ID prior to appointment. Existing directors must have a Director ID by 30 November 2022 (or 30 November 2023 if a director of a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*).

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CONSUMER DATA RIGHT

KEY MESSAGE

- The Consumer Data Right (CDR) is a pioneering economic reform that enables consumers to safely share the data Australian businesses hold about them for their own benefit. The Government is committed to expanding the CDR across the economy and growing opportunities for consumers. As the CDR expands, the Government will ensure it promotes secure management and protection of consumers' data.

KEY FACTS AND FIGURES

- The CDR is changing the way Australian consumers benefit from the data businesses hold about them by enabling them to safely share that data with trusted parties to access services tailored to their unique circumstances, such as:
  - comparing products and services
  - accessing better value and improved services, and
  - assisting financial and cashflow management.
- Implementation in the banking sector (known as Open Banking) is very well progressed, with nearly 100 per cent of market share (measured by share of household deposits) covered by CDR data-sharing.
- From 15 November 2022, the CDR will make it possible for consumers to share their energy data held by the biggest three energy retailers (AGL, Energy Australia and Origin) and the Australian Energy Market Operator.
- Building on this momentum, the Government is committed to expanding the CDR by way of:
  - continuing implementation of the CDR in the telecommunications sector.
  - progressively assessing and rolling out the CDR to the non-bank lending, superannuation and insurance sectors (also known as Open Finance).

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- Providing new opportunities for consumers to use their data by amending the CDR framework to enable action initation. This would create a new, direct channel for consumers to instruct a firm to initiate actions (including payments) on their behalf, with their consent
  - draft legislation to enable action initiation was released for public consultation on 26 September.
- legislative amendments to improve participation in the CDR, especially for business consumers.

- The independent Statutory Review of the CDR report by Ms Elizabeth Kelly PSM was released on 29 September 2022.
  - The Review found that the CDR's statutory framework has so far been broadly effective in supporting the CDR's rollout, is sufficiently flexible and robust to accommodate further changes to achieve policy objectives, and has scope to further explore its limits as the CDR develops.
  - The report's 15 findings and 16 recommendations provide reflections on the implementation of the CDR to date, suggest developments that could improve CDR into the future, and prompt future discussion.
  - The Government is currently considering its response to the Review.

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BACKGROUND

Hot issues

In light of the Optus data breach, how are the risks to consumers from sharing their data through the CDR being managed? Is the Government concerned about expanding the CDR to telecommunications due to the breach?

- Currently, there are less secure ways businesses can obtain consumer data that leave consumers vulnerable, such as screen scraping. The CDR reduces the need for these practices while also giving consumers more control over the process. By providing a more secure framework to share data, the CDR reduces risks of fraud and privacy breaches.
- The CDR is underpinned by strong privacy and security protections. It is consent-based, which means that consumers can choose whether to use it or not – and providers must receive explicit and informed consent to use data.
  - Data holders can only share data under the CDR when consumers have consented for it to be shared for a specific purpose. Consumers may withdraw this consent at any time.
  - Consumers must actively select the data about themselves they want shared, and only data that is necessary for the consumer's purpose can be sought, collected or used.
  - When a provider no longer needs a consumer's data, the data must be deleted or de-identified, unless otherwise required by law, a court or tribunal order, or in relation to court or dispute resolution proceedings. Whether the data is deleted or de-identified is up to the consumer, not the business.
- There is no central repository for CDR data within the CDR ecosystem. CDR data holders are required to respond to individual requests for data-sharing and provide the data directly to the authorised accredited data recipients.
  - This data does not travel through a central Government register or system.

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- As part of the privacy framework, if a consumer thinks a business operating in the CDR system has mishandled their data or breached their privacy, they have the right to make a complaint to the Office of the Australian Information Commissioner. The CDR also includes substantial civil penalties for non-compliance with the privacy safeguards.
- Treasury undertakes a thorough assessment of the overall benefits to consumers prior to rolling out the CDR to a new sector, including whether there are any risks to particular cohorts of consumers, and implements mitigation strategies as appropriate.
- The CDR in telecommunications will allow consumers to reclaim control of the data their service providers hold about them by sharing data with third parties that offer innovative products and services in a controlled and regulated environment so consumers can benefit, such as helping them compare telco plans.
  - To mitigate privacy risks in the implementation of CDR in telecommunications, sensitive consumer data sets, such as someone’s date of birth, have been deliberately excluded from the CDR.
- The Government will continue to review the CDR’s privacy and cyber security settings to ensure they are fit-for-purpose as the system evolves.
  - The recently completed Statutory Review of the CDR pointed to the need for a comprehensive cybersecurity assessment of the system.
  - Government is already progressing this as a matter of priority. On 20 September 2022, prior to the Optus data breach, the Government went out to market for external expertise to advise on cybersecurity in the broader CDR ecosystem. This includes an assessment of the current CDR cybersecurity settings, as well as a review of the broader environment within which the CDR exists and operates, to inform ongoing management of cybersecurity risks as the CDR continues to grow and evolve. The request for tender closed on 14 October 2022.

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What is being done about CDR data quality issues?

- The CDR is an entirely new framework for data-sharing and it has been in an intensive build phase. It is a rules and technical standards-based framework that will take some time to scale-up and benefit consumers.
- As the first users have begun to participate in the system, it will take time for the quality of the data to be as useful as possible.
- The ACCC is working closely with CDR participants on data quality.
- The ACCC's work includes issuing guidance that sets clear expectations on the availability, readability and quality of data shared; actively monitoring system performance and engaging with data holders that are not meeting performance reporting requirements; and publishing a participant performance dashboard to drive self-improvement practices.
  - The ACCC will take enforcement action against non-compliant entities where necessary. For example, in July 2022 the ACCC fined Bank of Queensland Ltd for allegedly breaching CDR Rules by failing to provide a service enabling consumers' data to be shared.

When will we see the CDR benefit consumers?

- The CDR is a new economic reform that is just getting started.
- Right now, in the banking sector, consumers can choose to securely and conveniently share their banking data with accredited and trusted recipients to access better value products and services, tailored to their circumstances.
- As CDR expands to the energy sector, bringing energy-related consumer and product information into the CDR will help households make better comparisons on their energy plans and access better deals, which will be very helpful to consumers in the context of rising energy costs.
- Expanding the CDR to telecommunications will allow consumers to access more accurate information about their internet and mobile bills so they can more easily choose products and bundle solutions that suit their needs, encouraging more competition in the sector.

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  – Combined with the opportunities of banking and energy data-sharing with consumer consent, it can also encourage the creation of new products and services to support Australia's economy.

- At this early stage, the CDR has spurred the creation of new tech companies and innovative products and services, such as:

  – Verifier uses the CDR to provide financial wellbeing checks, allowing customers to check their insights and assumptions against real-time data to create better financial outcomes.

  – Yodlee uses the CDR to offer an account aggregation service that allows users to see their credit card, bank, investment, email, travel reward accounts, etc on one screen.

  – Sherlok, a representative of Adatree, uses the CDR to give mortgage brokers analytics and insights to help them make instant credit decisions for clients with minimal effort.

  – Payble uses the CDR to provide a platform to identify customers who would benefit from flexible payment options.

How will action initiation be enabled in the CDR?

- The Government has released draft legislation to enable action initiation in the Consumer Data Right for public comment by 24 October.

- Action initiation will create a new channel for consumers to instruct a firm to initiate actions on their behalf and with their consent. This will expand the CDR from a data sharing scheme to a scheme that allows consumers to act on the insights that they receive, bringing a range of benefits to consumers and Australia's digital economy.

- When implemented, action initiation could allow consumers to use the CDR to do things such as update their contact details across multiple accounts, automate payments towards a savings or investment goal or compare electricity prices and then switch services.

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- The proposed bill would allow the relevant Minister to declare action types for existing data holders. This is consistent with the current data sharing designation process.
- The CDR would not alter or regulate how businesses complete different action types. Instead, it would simply establish a new channel to instruct businesses to complete actions that they already do, while protecting consumers' privacy.

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