

FINANCIAL SERVICES REGULATORY UPDATE

True Oak develops and distributes a monthly overview of current and proposed regulatory changes in the Australian financial services industry that we think might be of interest to our CAR clients and Trustee Services clients.

FEATURE ARTICLES

March was a quiet month for relevant regulatory updates, so I've included two feature articles.

What is Automated Decision Making and Why Does It Matter?

Bright Law, 10 March 2025. Find the original article [here](#).

As generative AI involving automated decision-making is increasingly accepted, one of the issues is understanding how automated decision-making operates and ensuring it operates as intended.

While AI and automated decision-making can make you more efficient, you need to understand how to use it while protecting your customers' personal information.

Whether the decision relates to making a loan or offering employment, someone needs to be accountable for the model or algorithm, its sound operation, and the outcomes it delivers.

The [Privacy Amendment Act 2024](#) inserts new requirements in the Privacy Act for regulated businesses concerning the information that must be included in their privacy policies about the kinds of personal information used, and types of decisions made, in automated decision-making.

Automated decision-making is broadly defined to include:

- (a) a computer program which makes, or does a thing that is substantially and directly related to making a decision; and
- (b) the decision could reasonably be expected to significantly affect the rights or interests of an individual; and
- (c) personal information about the individual is used in the operation of the computer program to make the decision or do the thing that is substantially and directly related to making the decision.

From **11 December 2026**, the information which must be included in a privacy policy will include:

- (i) the kinds of personal information used in the operation of such computer programs;
- (ii) the kinds of such decisions made solely by the operation of such computer programs; and
- (iii) the kinds of such decisions for which a thing, that is substantially and directly related to making the decision, is done by the operation of such computer programs.

To make those disclosures you need to understand how the person affected can access automated decision-making and whether they can opt out of it?

This requires decisions about the program's design: what information is used and what influences its decisions?

Some practical lessons on the regulatory “wildcard” – the efficiently, honestly and fairly obligation

Holley Nethercote Lawyers, 28 February 2025. Find the full article [here](#).

Section 912A of the *Corporations Act 2001* includes the obligation for a licensee to do all things necessary to ensure that financial services covered by its licence are provided efficiently, honestly and fairly (“the EHF obligation”).

Despite being the first on the list, the EHF obligation has earned the reputation of being one of the most unclear and elusive commandments. Defining what compliance looks like – and on the flip side, what a breach looks like – is not always clear.

Lesson #1: The EHF obligation is a separate, standalone obligation

- While a breach of the EHF obligation is often coupled with other contraventions of the Corporations Act, the requirement to provide financial services efficiently, honestly and fairly is not just a “mission statement” for good corporate governance; it is a standalone, civil penalty provision actionable in court.

- While it is still unclear whether the EHF obligation should be interpreted compendiously or whether it imposes three standalone obligations, recent judicial commentary suggests that the duty comprises of three separate obligations, so that a failure to discharge one – for example, providing services honestly and fairly, but not efficiently – could lead to a finding that the entire EHF obligation is breached.

Licensees should ensure that they have in place a robust, compliance framework for the EHF duty. For example, a separate item should be included in compliance checklists on whether the financial services are, among other things, being provided without undue delay, without systemic errors and with sufficient consumer protections against fraud in place.

Lesson #2: Prevention and remediation are key

- Compliance with the EHF obligation does not “require commercial perfection whereby any possibility of error or mistake is eliminated”.

- ASIC’s expectation is that licensees will implement robust processes and procedures that prevent bad things from happening and, if those bad things happen, to remediate and reassess their processes so that those things are unlikely to happen again.

Where an incident or breach of the law occurs, licensees should do a deep dive into their existing controls and systems and ask whether the incident or breach was preventable and implement those measures to strengthen their compliance frameworks.

Lesson #3: Consider community expectations

- Recent breaches (and alleged breaches) of the EHF obligation are all focused on consumer protection.

Licensees should pause and reflect on the following questions: If the roles were reversed and I was my own client, would I be happy with the financial service I am receiving? Does it adhere to community standards of competence, commercial morality and ethics? Would I think it is being performed efficiently, honestly and fairly, in accordance with reasonable community expectations? Licensees should review their policies, processes, disclosures, targets and timelines for providing their service – all from a client’s perspective, to assess whether anything falls below the “community expectations” line.

Lesson #4: The EHF obligation extends to your overseas activities

- Where you offer financial services (which can include marketing your products) in overseas jurisdictions and fail to comply with local law, this will also lead to a breach of the EHF obligation.

If you accept, onboard or solicit overseas customers, ensure that you have obtained legal advice in the relevant jurisdiction and that you are complying with any local registration or licensing requirements that may apply. Where you offer financial services (which can include marketing your products) in overseas jurisdictions and fail to comply with local law, this will also lead to a breach of the EHF obligation.

GOVERNMENT

1. Releases Statements on Digital Asset Industry

The Government has released a [Statement on Developing an Innovative Australian Digital Asset Industry](#) to provide clarity and certainty to the digital assets sector.

The Statement outlines the four key pillars of our approach to digital assets:

- a. a framework for Digital Asset Platforms (DAPs), to provide certainty for industry and protection for consumers,
- b. a framework for payment stablecoins, under the Government's Payments Licensing Reforms,
- c. undertaking a review of Australia's Enhanced Regulatory Sandbox environment to ensure it is fostering innovation, and
- d. a suite of initiatives to investigate ways to safely unlock the potential benefits of digital asset technology across financial markets and the broader Australian economy.

In addition, the Government has released the Board of Taxation's [Review of the tax treatment of digital assets and transactions in Australia](#). The report concludes that the taxation of digital assets and transactions can already be accommodated under existing tax law and any uncertainty can be effectively managed by the Australian Taxation Office (ATO) providing additional guidance materials.

ASIC

2. Releases Sustainability Reporting Regulatory Guide

Following extensive stakeholder and public consultation, ASIC has published [Regulatory Guide 280 Sustainability Reporting \(RG 280\)](#) to provide guidance for entities that are required to prepare a sustainability report containing climate-related financial information under Chapter 2M of the *Corporations Act 2001*. This may include companies, registered schemes, registrable superannuation entities, and retail corporate collective investment vehicles.

ASIC has also published a media release titled [What small businesses need to know about sustainability reporting requirements](#), which explains that whilst the new rules require large businesses and financial institutions to disclose information each year about their financial risks, opportunities, plans and strategies associated with climate change to their investors and lenders, many small businesses form part of the value chain of larger businesses, which means they may need to engage with climate reporting considerations over time, even if they do not have any direct climate reporting obligations.

3. Updates FAQs for Virtual AGMs

ASIC has updated its webpage addressing some frequently asked questions from companies and registered schemes on holding virtual meetings, following the Government's response to a review into the virtual meetings provisions.

The updated [FAQs: Virtual meetings for companies and registered schemes](#) further explain the amendments that permit hybrid and virtual-only meetings.

The updates include setting out ASIC's expectation that members have equivalent opportunities to participate at meetings using virtual technology as occurs for in-person meetings, and providing guidance on:

- whether virtual meetings require a phone line option

- the use of webcasts, and
- how to notify ASIC once an entity's constitution has been amended.

PROFESSIONAL DEVELOPMENT OPPORTUNITIES

Sophie Grace Compliance Videos

Consultancy [Sophie Grace](#) has released a number of compliance-based videos that can be purchased separately. Consider, in particular, [AFSL Wholesale Client Qualification](#) and [What Things Must Not Be On Your Website](#).

Carbon Market Institute Courses

- Carbon Market Fundamentals Training:** e-learning course provides participants with an overview of the scientific and economic basis for carbon markets. More info [here](#).
- Carbon Farming Banker Training:** This finance sector-focused module builds capacity and knowledge of carbon farming in Australia from the perspective of bankers and agri-lenders. More info [here](#).

April 2025

- FINSIA – **2025 Equities Update** (Webinar – 3 April) – more info [here](#).
- Momentum Media – **Election 2025: Defining Australia's Financial Future** (Melbourne – 10 April) – more info [here](#).
- Forestry Australia – **2025 Forest Carbon Summit** (Canberra – 10-11 April) – more info [here](#).
- Carbon Markets Institute – **Carbon Markets Report 2025: Evolving Markets, Emerging Solutions** (Webinar – 11 April 2025) – more info [here](#).
- Australian Investment Council – **Foundations of Private Capital** (Sydney – 15-17 April) – more info [here](#).
- CyberDaily – **Australian Cyber Summit 2025** (Sydney – 29 April) – more info [here](#).

May 2025

- Carbon Market Institute – **Carbon Farming Industry Forum** (Lennox Head, NSW – 6-8 May) – more info [here](#).
- Holley Nethercote Lawyers - **No Advice v General Advice v Personal Advice Training** (Webinar – 15 May) – more info [here](#).
- Stockbrokers and Investment Advisers Association (SIAA) – **SIAA 2025: Creating Confidence** (Sydney – 19-20 May) – more info [here](#).
- International Business Review – **Investment Performance Measurement, Attribution and Risk Management 2025 Conference** (Sydney – 20-21 May) – more info to come.
- Australian Investment Council – **Australian Venture Summit 2025** (Sydney – 29 May) – more info [here](#).

June 2025

- International Business Review – **Investment Performance Measurement, Attribution and Risk Management 2025 Conference** (Sydney – 18-19 June) – more info [here](#).

July 2025

- a. Investor Daily – **Australian Wealth Management Summit** (Sydney – 31 July) – more info to come.

August 2025

- a. Carbon Market Institute – **12th AER Summit** (Melbourne – 13-14 August) – more info [here](#).

INTERESTING READS

Links to interesting blogs and articles I've recently read:

- a. [Scams Prevention Framework FAQs](#) – FAQs produced by Dwyer Harris Lawyers (27 March 2025)
- b. [Facilitating a successful ERP implementation](#) - Enterprise Resource Planning (ERP) systems are the backbone of modern business operations, providing a centralised platform for all aspects of a company's operations from finance to human resources. In this Insight, we have summarised tips and strategies for designing and negotiating these arrangements. (Allens Lawyers, 21 March 2025)
- c. [ASIC Chair Joe Longo spoke with AICD Managing Director and CEO Mark Rigotti at the recent Australian Governance Summit](#) (ASIC, 20 March 2025)
- d. [ASIC commences proceedings against FIIG for alleged cybersecurity failures](#) - ASIC has announced it has commenced civil penalty proceedings against FIIG Securities Limited (FIIG) for allegedly failing over four years to protect itself and its clients from cybersecurity risks. ASIC's enforcement action against FIIG is consistent with its current enforcement priorities, namely, to ensure licensees have in place adequate cybersecurity protections. ASIC Chair Joe Longo has also emphasised the importance of 'proactively and regularly' checking the adequacy of cybersecurity measures and following the advice of the Australian Signals Directorate's Australian Cyber Security Centre. (Allens Lawyers, 19 March 2025)
- e. [Recent developments in foreign investment \(FIRB\) regulation](#) - The Federal Government's recent changes to foreign investment policies released on 14 March 2025 introduce significant modifications. (Allens Lawyers, 19 March 2025)
- f. [PE Horizons 2025: the year to get creative](#) - PE Horizons takes a closer look at PE and deal-making trends from 2024 and explains what to expect throughout 2025. (Allens Lawyers, 17 March 2025)
- g. [Signing documents remotely](#) - We have produced a table summarising the legislative reforms across all Australian jurisdictions. (Allens Lawyers, 7 March 2025)
- h. [Emerging business risks in 2025](#) - This Insight summarises a discussion with Christine Holman, a senior non-executive director with over 30 years of experience, on the emerging risks boards and management are facing in 2025. (Allens Lawyers, 4 March 2025)
- i. [2nd Annual Sustainability Reporting Summit speech](#) - Delivering the keynote address at the 2nd Annual Sustainability Reporting Summit on 27 February 2025, ACCC Deputy Chair, Mick Keogh discussed the ACCC's priority to address consumer, fair trading and competition concerns in relation to environmental claims and sustainability, with a focus on greenwashing. (ACCC – 27 February 2025)

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This Regulatory Update is a summary of relevant legislative and regulatory information sourced from publicly available Government and Regulator announcements and eNewsletters produced by and for the financial services industry. The information contained within is not legal or compliance advice and should not be relied upon as such. Specific legal or compliance advice about your specific circumstances should always be sought separately before taking any action based on information in this publication.