

## 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 and Fund Manager clients.

### FEATURE ARTICLE

#### Financial Services Greenwashing

*This Update's feature article comes from David Jacobson at Bright Law. For more information, see [www.brightlaw.com.au](http://www.brightlaw.com.au).*

Action against greenwashing is an enforcement priority of both the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC).

The ACCC and ASIC work closely together on the detection and investigation of misleading environment claims, including corporate sustainability claims and claims in connection with financial products and services.

"Greenwashing" is false or misleading information claiming that a company is better for or less harmful to the environment than it is.

"Bluewashing" is false or misleading information that portrays a company as having a greater positive impact on human rights than it does.

"Greenhushing" occurs when firms under-report or strategically withhold information about their actual environmental goals and achievements.

An environmental claim is any representation made by a business about its environmental impact, including claims that give the impression that your business, products or services: (a) have a neutral or positive impact on the environment or (b) are less harmful to the environment than alternatives, or (c) have specific environmental benefits.

Some businesses intentionally make claims that create misleading impressions to capitalise on consumer preferences for environmentally sustainable products and services without making genuine investments in sustainable practices. However, the ACCC has observed that sometimes businesses mislead consumers inadvertently. This happens for various reasons, including poor understanding of supply chains, a lack of due diligence before making claims, or poor reporting practices.

The ACCC has published a [guide for businesses](#) on making claims about the environmental impact of their business, products or services to assist them in complying with the Australian Consumer Law.

ASIC is monitoring sustainability-related representations made by companies including 'net zero', 'carbon negative' and other climate-related claims. You must consider whether representations are accurate, reasonably based, appropriately qualified and include all the relevant information. [ASIC Information Sheet 271](#) contains a series of questions to ask as well as examples.

The Australian Government is working with the Australian Sustainable Finance Institute to develop a [sustainable finance taxonomy](#) to provide common definitions for sustainable economic activities in Australia.

[Climate financial reporting requirements](#) will commence from 1 January 2025 for Australia's largest listed and unlisted companies and financial institutions, and other large businesses will be phased in over time. However, voluntary statements that entities wish to make about their sustainability profile or credentials, and which are not required by the new reporting regime will still be assessed on the principles applicable to misleading and deceptive statements and the established enforcement principles that have been applied to date to greenwashing.

## GOVERNMENT

### 1. Announces Next Package of Financial Advice Reforms

The Government has announced details of the second tranche of the Delivering Better Financial Outcomes reforms after consulting widely. These changes outlined in a factsheet [Ensuring access to quality and affordable financial advice](#) aim to expand advice services, reduce unnecessary compliance, help advisers focus on high-quality advice, and maintain strong consumer protections.

Importantly:

- The Government will introduce a new class of financial adviser to deliver simple advice that is quality, helpful, and safe for consumers. The new class of adviser will be restricted to advising only on products issued by prudentially regulated entities.
- The best interests' duty will be modernised into an outcomes-focused duty with the existing process-based safe harbour steps removed.
- Statements of Advice will be replaced with a principles-based record that is in plain English and addresses the client's needs.

### 2. Passes Amendments to the AML/CTF Act

The [Anti-Money Laundering and Counter-Terrorism Financing \(AML/CTF\) Amendment Act 2024](#) has received Royal Assent.

From 31 March 2026, new services and entities will begin coming under AUSTRAC regulation following reforms to anti-money laundering and counter-terrorism financing (AML/CTF) laws.

For industries already regulated by AUSTRAC, there are changes to AML/CTF program requirements, customer due diligence and the tipping off offence. The reformed obligations will apply from 31 March 2026 to current AUSTRAC reporting entities, except the tipping off reforms which will apply from 31 March 2025.

AUSTRAC has produced a [Summary of changes for current regulated entities](#).

### 3. Passes the Privacy and Other Legislation Amendment Bill 2024

The [Bill](#) contains significant measures including:

- The introduction of a statutory tort for serious invasions of privacy
- The expansion of the OAIC's enforcement and investigation powers
- A mandate for the OAIC to develop a Children's Online Privacy Code
- A new mechanism to prescribe a 'white list' of countries and binding schemes with adequate privacy protections to facilitate cross-border data transfers
- A requirement that privacy policies contain information about substantially automated decisions which significantly affect individuals' rights or interests.

## ASIC

### 4. Reissues Regulatory Guide on Funds Management and Custodial Services Involved in Crypto Assets

ASIC has reissued [RG 133 Funds management and custodial services: Holding assets](#) to introduce new guidance with respect to holding crypto assets. These changes impact responsible entities where scheme assets comprise or include crypto-assets and licensed providers of custodian services where the crypto-assets are financial products.

The revised RG 133 provides ASIC's guidance on good practices for crypto-assets holders and maintaining robust information security controls and risk management processes.

### 5. Releases Consultation Paper on Digital Assets

ASIC has released [Consultation Paper 381 Updates to INFO 225: Digital Assets: Financial Products and Services](#) outlining proposals to update [Information Sheet 225 Crypto Assets](#) to provide greater clarity about how the current financial product definitions apply to digital assets and related products.

The key updates that ASIC has proposed for INFO 225 include:

- Adding 13 worked examples of how current financial product definitions apply to digital assets and related products;
- Adding further discussion on ASIC's approach to licensing digital asset businesses;
- Adding guidance around the consideration of the design and distribution obligations; and
- Decreasing the emphasis on initial coin offerings as a method for selling digital assets.

Feedback is open until 28 February 2025.

### 6. Commences Surveillance on Private Credit Funds

With increased focus from international regulators on certain aspects of private credit funds such as transparency around valuations and liquidity, ASIC has now commenced surveillances on a number of registered Private Credit funds.

Private credit has until now had less regulatory focus than traditional bank lending and ASIC is considering further regulation, consistent with the focus from international regulators. ASIC's current surveillance has a strong focus on disclosure, valuations, liquidity, and debt recovery actions and distribution of private credit funds.

**Linked Article:** [Private credit industry under ASIC scrutiny: Spotlight on Oak Capital](#) (Colin Biggers & Paisley – 4 November 2024)

### 7. Announces 2025 Enforcement Priorities

ASIC has [announced](#) its enforcement priorities in 2025.

ASIC will focus on:

- Misconduct exploiting superannuation savings
- Unscrupulous property investment schemes
- Failures by insurers to deal fairly and in good faith with customers
- Strengthening investigation and prosecution of insider trading
- Business models designed to avoid consumer credit protections
- Misconduct impacting small businesses and their creditors

- Debt management and collection misconduct
- Licensee failures to have adequate cyber-security protections
- Greenwashing and misleading conduct involving ESG claims
- Member services failures in the superannuation sector
- Auditor misconduct; and
- Used car finance sold to vulnerable consumers by finance providers.

ASIC has confirmed that its enduring priorities will target:

- Misconduct damaging market integrity including insider trading, continuous disclosure breaches and market manipulation
- Misconduct impacting First Nations people
- Misconduct involving a high risk of significant consumer harm particularly conduct targeting financially vulnerable consumers
- Systemic compliance failures by large financial institutions resulting in widespread consumer harm
- New or emerging conduct risks within the financial system
- Governance and directors' duties failures.

## AUSTRAC

### 8. Consults on Draft Revisions to AML/CTF Rules

AUSTRAC has released a [Consultation Paper and draft new anti-money laundering and counter-terrorism financing \(AML/CTF\) Rules](#) to implement recent amendments to the Anti-Money Laundering and Counter-Terrorism Financing Act.

To support the changes, AUSTRAC is updating the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1). These Rules provide detailed information in relation to specific requirements under the AML/CTF Act for current and future reporting entities with more detail on their AML/CTF obligations. The reforms would reorganise relevant Rules into 'Parts' as follows, organised thematically in the order in which a reporting entity would implement each obligation.

## PROFESSIONAL DEVELOPMENT OPPORTUNITIES

### February 2025

- a. Financial Standard – **Chief Economists Forum** (Sydney – 18 February; Melbourne – 20 February) – more info [here](#).

### March 2025

- a. Climate Zeitgeist – **Climate Investor Forum** (Melbourne – 19 March) – more info [here](#).

## INTERESTING READS

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

- a. [Defending from within: a guide to insider threat management](#) - Given how hard it is to protect against sophisticated cyber-attacks by external threat actors, reducing insider risk can significantly affect an organisation's overall risk profile. But insider threats present unique challenges for organisations. (Allens – 5 November 2024)

- b. [Efficiently, honestly and fairly – The significance of detection and remediation of incidents](#) - We are aware that, particularly in relation to the 'efficiently' limb, the industry is grappling with the scope of the obligation, including the role of materiality. (Herbert Smith Freehills – 14 November 2024)
- c. [AI use and risks - and the regulatory response](#) - AI poses risks unlike any other technology. Regulation is lagging, but there have been some important developments including the EU AI Act and Australia's proposed mandatory AI guardrails. Our latest article surveys how AI is being adopted, the risks with AI, and how AI is going to be regulated. (Dwyer Harris – 9 December 2024)
- d. [Digital Asset Update: Australian court determines Bitcoin is property](#) - The Supreme Court of Victoria has delivered a landmark decision, determining that an interest in Bitcoin can be a proprietary interest. The decision is significant. It takes a different approach to the question than in other jurisdictions. It also will help establish that (at least in Australia): (i) crypto assets are capable of being the subject of a trust; (ii) crypto assets are capable of being the subject of a proprietary injunction; and (iii) crypto assets are capable of being frozen to prevent their transfer between exchanges. This article dissects the case and considers what the decision means for holders of crypto assets and prospective litigants moving forward. (Ashurst Lawyers – 16 December 2024)
- e. [Australia's privacy reforms are now law – what should you focus on?](#) - The first tranche of Australia's generational change in privacy regulation is now law, with most changes in effect from 10 December 2024. (Ashurst Lawyers – 17 December 2024)

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